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OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION

Third periodic reports of States parties due in 1999

Addendum

United States of America*

[21 September 2000]

* The present report brings together in a single document the initial, second and third periodic reports of the United States of America, which were due on 20 November 1995, 1997 and 1999 respectively.

The information submitted by the United States of America in conformity with the consolidated guidelines on the initial part of reports by States parties appears in document HRI/CORE/1/Add.49.

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Introduction

1. The Government of the United States of America welcomes the opportunity to report to the Committee on the Elimination of Racial Discrimination on the legislative, judicial, administrative and other measures giving effect to its undertakings under the International Convention on the Elimination of All Forms of Racial Discrimination, in accordance with article 9 thereof. The form and content of this report follow the general guidelines adopted by the Committee in July 1993 (CERD/C/70/Rev.3).

2. This report has been prepared by the United States Department of State with extensive assistance from the White House, the Civil Rights Division of the United States Department of Justice, the Equal Employment Opportunity Commission, and other departments, agencies and entities of the United States Government most closely concerned with the issues addressed by the Convention. Contributions were also solicited and received from interested members of the many non-governmental organizations and other public interest groups active in the area of civil rights, civil liberties and human rights in the United States. The report covers the situation in the United States through August 2000 and constitutes the initial report to the Committee.

3. The United States ratified the International Convention on the Elimination of All Forms of Racial Discrimination in October 1994, and the Convention entered into force for the United States on 20 November 1994. In its instrument of ratification, which was deposited with the Secretary-General of the United Nations pursuant to article 17 (2) of the Convention, the United States conditioned its ratification upon several reservations, understandings and declarations. These are set forth in the annex and discussed at the relevant portions of this report.

4. Since 17 June 1997, the Federal Government has been engaged in a major review of domestic race issues. On that date, the President established an "Initiative on Race" and authorized creation of a seven-member Advisory Board to examine issues of race, racism and racial reconciliation and to make recommendations on how to build a more united America for the twenty-first century (Executive Order No. 13050, 62 Fed. Reg. 32987 17 June 1997). The Advisory Board submitted its report to the President on 18 September 1998. Based on its recommendations, the Administration is proceeding to formulate specific proposals and plans for action. A copy of the Initiative's final report and a chart-book prepared for the President's Initiative by the Council of Economic Advisers entitled "Changing America: Indicators of Social and Economic Well Being by Race and Hispanic Origin" (September 1998) are available at the White House Web site, <<http:www.whitehouse.gov>>.

5. Since 1992, the United States has also been a party to the International Covenant on Civil and Political Rights, some provisions of which have wider application than those of the International Convention on the Elimination of All Forms of Racial Discrimination. The initial U.S. report under the Covenant, which provides general information, was submitted to the Human Rights Committee in July 1994 (HRI/CORE/1/Add.49 and CCPR/C/81/Add.4) (see <http://www.state.gov>). The United States also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at the same time as it ratified the

International Convention on the Elimination of All Forms of Racial Discrimination. The initial U.S. report under the Convention against Torture was submitted to the Committee against Torture in September 1999 and is available on the Department of State Web site, <http://www.state.gov>.

6. Prior to ratifying the International Convention on the Elimination of All Forms of Racial Discrimination, the United States Government undertook a careful study of the requirements of the Convention in light of existing domestic law and policy. That study concluded that U.S. laws, policies and government institutions are fully consistent with the provisions of the Convention accepted by the United States. Racial discrimination by public authorities is prohibited throughout the United States, and the principle of non-discrimination is central to governmental policy throughout the country. The legal system provides strong protections against and remedies for discrimination on the basis of race, colour, ethnicity or national origin by both public and private actors. These laws and policies have the genuine support of the overwhelming majority of the people of the United States, who share a common commitment to the values of justice, equality, and respect for the individual.

7. The United States has struggled to overcome the legacies of racism, ethnic intolerance and destructive policies relating to Native Americans, and has made much progress in the past half century. Nonetheless, issues relating to race, ethnicity and national origin continue to play a negative role in American society. Racial discrimination persists against various groups, despite the progress made through the enactment of major civil rights legislation beginning in the 1860s and 1960s. The path towards true racial equality has been uneven, and substantial barriers must still be overcome.

8. Therefore, even though U.S. law is in conformity with the obligations assumed by the United States under the treaty, American society has not yet fully achieved the Convention's goals. Additional steps must be taken to promote the important principles embodied in its text. In this vein, the United States welcomed the visit of the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance during the fall of 1994 and took note of the report of his findings (E/CN.4/1995/78/Add.1, dated 16 January 1995). In November 1997, the White House convened an unprecedented Hate Crimes Conference to formulate effective responses to the increasing number of violent crimes motivated by racial and ethnic sentiments. The President's Initiative on Race, the establishment of the White House Office on the President's Initiative for One America, and the preparation of this report constitute important parts of that effort. Indeed, in confronting issues of race every day, the American public is engaged in an ongoing dialogue to determine how best to resolve racial and ethnic tensions that persist in U.S. society.

9. Reflecting the multi-ethnic, multi-racial and multicultural nature of America today, the private sector plays an important role in combating racism in the United States, through activities and programmes conducted by such non-governmental groups ("NGOs") as the American-Arab Anti-Discrimination Committee, the American Civil Liberties Union (ACLU), Amnesty International, the Anti-Defamation League, the Asian American Legal Defense and Education Fund, B'nai Brith, the Cuban-American National Council, Human Rights Watch, Indigenous Environmental Network, the Japanese American Citizens League, the Lawyers Committee for Human Rights, the Lawyers' Committee on Employment Rights, the League of

United Latin-American Citizens, the Mexican-American Legal Defense and Education Fund (MALDEF), the National Asian Pacific American Legal Consortium, the National Association for the Advancement of Colored People (NAACP), the NAACP Legal Defense and Education Fund, the National Conference for Community and Justice, the National Council of La Raza, the National Congress of American Indians, the National Urban League, the Native American Rights Foundation, Na Koa Ikaika, the Organization of Chinese Americans, the Southern Organizing Committee, the Southern Poverty Law Center, and the Southwest Network for Economic and Environmental Justice, among many others. NGOs played a vital role in the civil rights movement, have been actively involved in the President's Initiative on Race, and continue to be instrumental in working towards full achievement of the purposes of this Convention. Information about the activities of these and many other civil rights NGOs can be obtained through the Leadership Conference on Civil Rights, a coalition of organizations dedicated to promoting civil and human rights in the United States (see <http://www.civilrights.org>).

10. As a functioning, multi-racial democracy, the United States seeks to enforce the established rights of individuals to protection against discrimination based upon race, colour, national origin, religion, gender, age, disability status, and citizenship status in virtually every aspect of social and economic life. Federal law prohibits discrimination in the areas of education, employment, public accommodation, transportation, voting, and housing and mortgage credit access, as well as in the military and in programmes receiving federal financial assistance. The Federal Government has established a wide-ranging set of enforcement procedures to administer these laws, with the U.S. Department of Justice exercising a major coordination and leadership role on most critical enforcement issues. State and local governments have complementary legislation and enforcement mechanisms to further these goals.

11. At both the federal and state levels, the United States has developed a broad range of legal and regulatory provisions and administrative systems to protect and to promote respect for civil rights. Enforcement agencies have worked diligently over the last three decades to improve enforcement of these rights and to promote education, training and technical assistance. In addition, over the years, the U.S. Congress has significantly strengthened the enforcement provisions of some of the civil rights statutes. The Federal Government remains committed to providing full, prompt, and effective administration of these laws.

12. This commitment to eliminating racial discrimination began with the Emancipation Proclamation (effective on 1 January 1863), which freed the slaves in the Confederacy (the region comprised of the southern states which had attempted to secede from the Union), and with the end of the American Civil War (1861-1865). Since that time, American society has sought to create ever more effective means to address and resolve racial and ethnic differences without violence. Indeed, the amendments to the United States Constitution enacted at the war's conclusion, the Thirteenth Amendment (ending slavery), the Fourteenth Amendment (guaranteeing equal protection of the laws and due process of law), and the Fifteenth Amendment (guaranteeing Black[1] citizens the right to vote), directly addressed questions of racial discrimination. The laws enacted in the Reconstruction Era, immediately following the Civil War, also addressed the rights of minorities. Unfortunately, however, these laws did not succeed in changing attitudes born of generations of discrimination, and through restrictive interpretation and non-application, they were largely ineffective. Moreover, the U.S. Supreme

Court invalidated federal authority to protect Blacks and others from state-sponsored discrimination. As a result, through the first half of the twentieth century, racial discrimination and segregation was required by law (de jure) in many of our country's southern states in such key areas as education, housing, employment, transportation, and public accommodations. Discrimination and segregation was a common practice (de facto) in most other portions of the country. In addition, though the Fifteenth Amendment guaranteed that the "right of citizens of the United States to vote shall not be abridged by the United States or by any state on account of race, colour, or previous condition of servitude", many southern states enacted laws that were seemingly neutral, but were designed and implemented in a way to deny Black citizens the opportunity to participate in elections.

13. Prior to the middle of the twentieth century, there were no laws to address other forms of racial discrimination, such as discriminatory provisions in U.S. immigration law and policy. After the U.S. acquisition of California in 1848, there arose a need for cheap labour, and Chinese immigrants flocked to the western United States to work on the rapidly developing railroads. Anti-Asian prejudice and the competition that Chinese immigrants provided to American workers led to anti-Chinese riots in San Francisco in 1877, and then to the Chinese Exclusion Act of 1882. The Act banned all Chinese immigration for 10 years, and it was extended until 1924 when a new immigration law prohibited all Asian immigration to the United States. Several years later, law and policy towards Asian immigrants was again changed, extending citizenship rights to those already in the United States and establishing a quota for immigrants from various countries. The quota was abolished in 1965.

14. With regard to Native Americans, the United States has historically recognized Native American tribes as self-governing political communities that pre-date the U.S. Constitution. From 1778 until 1871, the United States entered into numerous treaties with Indian tribes, which recognized tribal self-government, reserved tribal lands as "permanent homes" for Indian tribes, and pledged federal protection for the tribes. Yet, the United States engaged in a series of Indian wars in the nineteenth century, which resulted in significant loss of life and lands among Indian tribes. In the 1880s, over the protests of Indian leaders, including Sitting Bull and Lone Wolf, the United States embarked on a policy of distributing tribal community lands to individual Indians in an attempt to "assimilate" Indians into the agrarian culture of our nation. This "Allotment Policy" resulted in a loss of almost 100 million acres of Indian lands from the 1880s until 1934, when President Franklin D. Roosevelt ended the policy with the enactment of the Indian Reorganization Act in 1934. This Act was intended to encourage Indian tribes to revitalize tribal self-government, so that Indian tribes might use their own lands and resources to provide a sustainable economy for their people. This policy of respect for Native American and Alaska Native tribes and cultures acknowledges tribal self-government and promotes tribal economic self-sufficiency.

15. In 1941, Franklin D. Roosevelt issued an Executive Order prohibiting discrimination on the basis of race, colour, creed or national origin in the war industries or Federal Government. However, the U.S. armed forces continued to operate racially segregated combat units until 1948. During the Second World War, persons of Japanese, German, and Italian ancestry suffered blatant forms of discrimination, justified on grounds of military necessity. Thousands of U.S. citizens, the majority of whom were ethnically Japanese, were "relocated" to internment camps throughout the western United States. This policy was held lawful by the U.S. Supreme

Court in Korematsu v. United States, 321 U.S. 760 (1944). In recent years, however, the United States has recognized the wrongfulness of this policy and made lump sum payments to Japanese Americans who were detained in accordance with this policy, or to their survivors.

16. Following the Second World War, a combination of grass-roots civic action and critical decisions by the executive and judicial branches of the Federal Government set the stage for strategies for overcoming the legacy of slavery. In 1948, the U.S. Supreme Court banned the use of racially restrictive covenants that limited the sale of housing to members of racial or religious minorities (Shelly v. Kramer, 334 U.S. 1 (1948)). In the same year, President Truman issued an Executive Order requiring equality of treatment for all persons in the U.S. armed forces. In 1954, the Supreme Court rendered its landmark decision in Brown v. Board of Education of Topeka, 347 U.S. 483 (1954), banning state-sponsored racial segregation in public education and creating the foundation for the emergence of the contemporary civil rights movements.

17. During the past 40 years there has been a steady stream of legislation at the federal, state and local levels creating remedies for individuals affected by racial discrimination. Some of the most significant pieces of federal civil rights legislation include: the Civil Rights Act of 1964, which outlawed discrimination in public accommodations, employment, and education; the Voting Rights Act of 1965, which prohibited voting discrimination and thus brought Blacks from southern states into the political process, and which continues to protect all racial and language minorities throughout the nation from discrimination in the political process; and the 1968 Fair Housing Act which eliminated discrimination in housing and mortgage lending. Executive Orders issued by Presidents through the years have supplemented this catalogue of protections by specifically requiring non-discrimination in a vast range of public programmes. Similarly, the Immigration Act of 1965 repealed restrictions on the permanent entry of Asians and made family reunification, not race or national origin, the cornerstone of U.S. immigration policy.

18. In each of the areas covered by this Convention, the American people can point with pride at the great strides towards equality made over the past half-century. However, despite these enormous accomplishments, much remains to be done to eliminate racial discrimination altogether. While the scourge of officially sanctioned segregation has been eliminated, de facto segregation and persistent racial discrimination continue to exist. The forms of discriminatory practices have changed and adapted over time, but racial and ethnic discrimination continues to restrict and limit equal opportunity in the United States. For many, the true extent of contemporary racism remains clouded by ignorance as well as differences of perception. Recent surveys indicate that, while most Whites do not believe there is much discrimination today in American society, most minorities see the opposite in their life experiences.

19. Indeed, in recent years the national conscience has been sharply reminded of the challenges to eradicating racism by such notorious incidents as the 1991 beating of Rodney King by two Los Angeles police officers; the death of Amadou Diallo in New York; the burning of Black churches, synagogues and mosques; the brutal murder of James Byrd, Jr., in Texas; the shootings at a Jewish cultural centre in Los Angeles, and the pattern of discrimination revealed in civil rights litigation against the Denny's restaurant chain and the Adams Mark Hotel.

Further, heightened awareness and discussion of racial issues have led some to call on Americans to re-examine our history and to consider making reparations in some form to Blacks for past slavery. These and other issues have prompted vigorous debate in schools, media and government over issues of race.

20. No country or society is completely free of racism, discrimination or ethnocentrism. None can claim to have achieved complete success in the protection and promotion of human rights, and, therefore, all should welcome open dialogue and constructive criticism. As a society, the United States continues to search for the best means to eliminate all forms of racial, ethnic and religious discrimination through the mechanisms available within a pluralistic, federal system of government.

21. The United States has long been a vigorous supporter of the international campaign against racism and racial discrimination. Indeed, the United States will play an active role in the upcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001. Towards that end, the United States is engaged in a domestic preparatory process that will invite the involvement of state and local government officials as well as academia and civil society.

22. The last half-century of progress has provided the United States with a useful perspective from which to offer insights to other countries with diverse and growing minority populations. By the same token, the people and Government of the United States can learn from the experiences of others. The United States looks forward to a constructive dialogue with the members of the Committee.

I. GENERAL

23. In accordance with the Committee's guidelines, the following sections provide general information about the land and people, the political and legal structure, and the status of civil and human rights in the United States. Additional background information on these subjects can be found in the initial report of the United States to the Human Rights Committee under the International Covenant on Civil and Political Rights (HRI/CORE/1/Add.49 and CCPR/C/81/Add.4) submitted in July 1994.

A. Land and people

24. The United States of America is a federal republic of 50 states, together with a number of commonwealths, territories and possessions. The District of Columbia - a federal enclave - is the seat of the national Government. The 50 states include 48 contiguous states, which span the North American continent, and the States of Alaska and Hawaii. As reported in the 1990 census, the United States had a land area of 9.2 million square kilometres, a population of 249 million, and an average population density of 27 per square kilometre.

25. There are several outlying areas under U.S. jurisdiction. These include Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, the Northern Mariana Islands, and several very small islands. In 1990, the outlying areas of the United States had a land area of 11,000 square kilometres and a population of 3.9 million. The U.S. population living abroad

was not enumerated as part of the 1990 census; however, administrative data from U.S. government agencies indicate that a total of 923,000 federal employees and their dependants lived abroad in 1990.

26. The population of the United States increased from 249 million on 1 April 1990, to an estimated 273 million on 1 July 1999, yielding an average annual increase of about 1.0 per cent. The population doubled from 76 million in 1900 to 152 million in 1950 and, based on a projection of 275 million for 2000, will increase slightly more than 80 per cent from 1950 to 2000.

27. The United States is an increasingly diverse society. Virtually every national, racial, ethnic, cultural, linguistic, and religious group in the world is represented among its population. Federal statistics compiled by the U.S. Census Bureau recognize four racial categories: White (a person having origins in any of the original peoples of Europe, the Middle East, or North Africa); Black (a person having origins in any of the Black racial groups of Africa); American Indian, Eskimo or Aleut (a person having origins in any of the original peoples of North and South America - including Central America); Asian or Pacific Islander (a person having origins in any of the original peoples of the Far East, South-East Asia, or the Indian subcontinent or in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands); and two ethnic categories: Hispanic origin (a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race) and not of Hispanic origin.[2] Members of each of the racial categories may belong to either of the ethnic categories.

28. The United States recognizes that these racial and ethnic classifications are by no means perfect. Indeed, the people of the U.S. struggle with issues of racial and ethnic identity, continually re-evaluating both the question, "What is race?" and its numerous, complex responses. Racial and ethnic groups are comprised of individuals of substantial diversity, making simple classifications difficult. Placing such individuals in racial and ethnic categories can even lead to further discrimination through perpetuating stereotypes. Nevertheless, classifications - imperfect as they may be - are necessary for reasons of governance and administration, and the U.S. Census Bureau regularly reviews its methodology to ensure accuracy and inclusiveness.

29. The population of the United States is primarily White non-Hispanic; however, due partly to large-scale immigration in the past three decades, primarily from Latin America and Asia, the White non-Hispanic proportion has dropped. Between 1990 and 1999 while the White non-Hispanic population increased from 188.3 million to 196.1 million, its percentage of the total population dropped from 75.7 per cent to 71.9 per cent.

30. While the White non-Hispanic population grew by 4 per cent from 1990 to 1999, each of the "minority" groups increased much more rapidly. During that period, the Asian and Pacific Islander population increased by 46 per cent (from 7.5 million to 10.9 million); the Hispanic population increased by 40 per cent (from 22.4 million to 31.4 million); the American Indian, Eskimo, and Aleut population increased by 16 per cent (from 2.1 million to 2.4 million); and the Black population increased by 14 per cent (from 30.5 million to 34.9 million).[3]

31. Based on population projections issued in January 2000 by the U.S. Census Bureau, the White non-Hispanic proportion of the U.S. population will have declined to 53 per cent of a projected total population of 404 million by the year 2050. These projections indicate a Hispanic population in 2050 of 24 per cent; a Black population of 15 per cent; an Asian and Pacific Islander population of 9.3 per cent; and an American Indian, Eskimo, and Aleut population of 1.1 per cent.[4]

32. The results of the 1990 census showed that the distribution of the U.S. population by urban residence and region of the country varied considerably by race and ethnicity. Blacks and Hispanics are much more likely to live in large urban areas than are non-Hispanic Whites. In 1990, 75 per cent of the U.S. population lived in urban areas, defined generally as all places (incorporated or unincorporated) of 2,500 or more population. The corresponding proportions were as follows: 71 per cent of the total White, non-Hispanic population lived in urban areas; 87 per cent of the Black population; 56 per cent of the American Indian, Eskimo, and Aleut population; 95 per cent of the Asian and Pacific Islander population; and 91 per cent of the Hispanic population. The proportions of the population residing in urbanized areas of 1 million or more population were as follows: 38 per cent of the total population lived in such areas; 32 per cent of the country's White non-Hispanics lived in such areas; 51 per cent of Blacks; 20 per cent of American Indians, Eskimos, and Aleuts; 66 per cent of Asians and Pacific Islanders; and 61 per cent of Hispanics.

33. Of the total population in 1990, 20 per cent lived in the North-East, 24 per cent in the Midwest, 34 per cent in the South, and 21 per cent in the West. However, over one half of the Black population (53 per cent) lived in the South, despite massive migration to other regions of the country during the twentieth century. Other minority groups were concentrated in the West, including 48 per cent of American Indians, Eskimos, and Aleuts; 56 per cent of Asians and Pacific Islanders; and 45 per cent of Hispanics.

34. Historically, immigration has had a profound effect on the culture of the United States, and immigration continues to be a driving force in the diversification of the population today. Between 1990 and 1997, the foreign-born population increased from 19.8 million to an estimated 25.8 million, or from 7.9 per cent to 9.7 per cent of the population. This continues an upward trend since 1970 when the foreign-born population reached a twentieth century low of 9.6 million, or 4.7 per cent of the population. In the first half of the twentieth century, the proportion of the foreign-born population peaked at 14.7 per cent in 1910, and the number of foreign-born peaked at 14.2 million in 1930.

35. From 1990 to 1997, the foreign-born population increased sharply from Latin America (8.4 million to 13.1 million) and from Asia (5.0 million to 6.8 million). During this same period, the foreign-born population from Europe did not change significantly (4.4 million to 4.3 million). The proportion of the foreign-born population from Europe, historically the primary source of immigration to the United States, dropped from 62 per cent in 1970 to 23 per cent in 1990 and to 17 per cent in 1997.

36. In 1997, 7.0 million, or 28 per cent, of the foreign-born population in the United States was from Mexico, up from 4.3 million, or 23 per cent, of the foreign-born population in 1990. The estimated foreign-born population from Mexico in 1997 was about equal to the estimated

foreign-born population from the other nine leading countries combined: the Philippines (1,132,000), China (1,107,000), Cuba (913,000), Viet Nam (770,000), India (748,000), the Soviet Union prior to its division into 12 independent republics (734,000), the Dominican Republic (632,000), El Salvador (607,000), and the United Kingdom (606,000).

37. These estimates suggest that of the 10 leading countries of birth of the United States foreign-born population in 1997, 4 are in Latin America, 4 are in Asia, and 2 are in Europe. In 1970, the 10 leading countries included 7 in Europe (Italy, Germany, United Kingdom, Poland, the Soviet Union, Ireland, and Austria), Canada, Mexico and Cuba.

38. Because of large-scale immigration to the United States in recent decades, many U.S. residents speak a language other than English at home and are not fluent in English. The 1990 census revealed that among the 230 million individuals five years of age and over, 31.8 million spoke a language other than English at home. Among these, 17.9 million spoke English "very well", 7.3 spoke English "well", 4.8 million spoke English "not well", and 1.8 million spoke English "not at all".

39. Of the 92 million households enumerated in the 1990 census, 2.9 million were "linguistically isolated". These were defined as households in which no person 14 years and over spoke only English at home or spoke a language other than English at home and also spoke English "very well".

40. Of the 31.8 million individuals who spoke a language other than English at home in 1990, 17.3 million spoke Spanish, 8.8 million spoke other Indo-European languages, 4.5 million spoke Asian and Pacific Island languages, and 1.2 million spoke other languages. In addition to Spanish, which accounted for 54 per cent of non-English languages, the leading languages spoken at home by numbers of speakers were French (1,930,000), German (1,548,000), Chinese (1,319,000), Italian (1,309,000), Tagalog (843,000), Polish (723,000), Korean (626,000), and Vietnamese (507,000).

B. General political structure

41. At the national level, the U.S. Constitution establishes a democratic system of governance and guarantees a republican system at the state and local level. It establishes the will of the people as the basis of governmental legitimacy.

42. The Federal Government consists of three branches: the executive, the legislative and the judicial. The executive branch is headed by the President, who is elected for a term of four years. The President has broad powers to manage national affairs and the workings of the Federal Government, including the various executive departments and agencies. The President is charged with "taking care" that the laws are faithfully executed.

43. The U.S. Constitution vests legislative powers in the Congress, which consists of the U.S. Senate and the U.S. House of Representatives. The U.S. Senate is made up of 100 Senators, two elected from each state, to six-year terms. Senate terms are staggered so that one third of the Senators are elected every two years. The U.S. House of Representatives is made up of 435 members, each of whom is elected to a two-year term from a single-member congressional

district. House seats are allotted to each state on the basis of population. The third branch consists of a system of independent federal courts headed by the Supreme Court of the United States and including subordinate appellate and trial courts throughout the country. Federal judges are appointed by the President with the advice and consent of the Senate. That means that presidential appointments to the federal bench must be approved by a majority vote of the Senate. The power of the federal judiciary extends to civil actions for money damages and other forms of redress, such as injunctive relief, as well as to criminal cases arising under federal law. The Constitution safeguards judicial independence by providing that federal judges shall hold office during "good behaviour" - in practice, until they die, retire or resign.

44. At the state level, this tripartite governmental structure is replicated, with each state having its own constitution and executive, legislative, and judicial branches. The state governor acts as head of the executive; all states have two legislative houses (except Nebraska, which has only one); and most state court systems mirror the federal, with at least three levels. One important difference is that state judges are often elected rather than appointed by the state's chief executive. Most states are divided into counties, and areas of population concentration are incorporated into municipalities or other forms of local government (cities, towns, townships, boroughs, parishes or villages). In addition, states are divided into school and special service districts to provide education and various other public services (e.g., water, sewer, fire and emergency, higher education, hospital services, transportation). The result is that literally hundreds of governmental entities and jurisdictions exist at the state and local levels; for the most part, the leaders of these entities are elected, although some are appointed by others who are elected.

45. A significant number of U.S. citizens live in areas outside the 50 states, yet within the political and legal framework of the United States. These areas include: the District of Columbia (seat of the national Government and a federal enclave); the insular areas of American Samoa, Guam, the Commonwealths of Puerto Rico and the Northern Mariana Islands, the U.S. Virgin Islands, and Johnston, Midway, Palmyra and Wake atolls. The specific governmental framework for each is largely determined by the area's historical relationship with the United States.

46. A special relationship exists between the U.S. Government and Native Americans. While the diversity of the indigenous North American population makes generalizations difficult (there are more than 550 federally recognized American Indian and Alaskan Native tribes and groups, speaking more than 150 different languages), many enjoy considerable governmental autonomy on reservations or other Indian lands and Alaska villages. The provision of "federal recognition" reflects the principle of government-to-government relations founded under U.S. law and practice. Other tribal groups have over time been assimilated into local society.

47. Since 1924, Native Americans have enjoyed the protections of the U.S. Constitution when not on their own reservations. When on their own reservations, Native Americans are subject to Tribal law, the Indian Major Crimes Act and the Indian Civil Rights Act which sets

forth the essential protections of the Bill of Rights of the United States Constitution. The protections afforded to Native Americans while on their own reservations are consistent with U.S. constitutional guarantees.

48. The U.S. Government has a similar relationship with Native Hawaiians. Since Hawaii's admission into the Union, Congress has endeavoured to protect and improve the welfare of Native Hawaiians by establishing special programmes in the areas of health care, education, employment, and loans; and enacting statutes to preserve Native Hawaiian culture, language, and history. A recent case decided by the U.S. Supreme Court, Rice v. Cayetano, 527 U.S. 1061, 120 S.Ct. 31 (1999), has cast doubt on the Congress' authority to legislate in a manner that grants Native Hawaiian preferences. The Court's decision in Rice has thus prompted spirited debate over the relationship between Native Hawaiians and the U.S. Government, and indeed, the U.S. Departments of Interior and Justice are in the process of preparing a report on a reconciliation process between the Federal Government and Native Hawaiians initiated by Senator Daniel K. Akaka in 1999.

C. General legal framework

49. The U.S. Constitution is the central instrument of government and the supreme law of the land. Adopted in 1789, it is the world's oldest national, written Constitution still in force. Together with its 27 amendments (the first 10 are known as the "Bill of Rights"), the Constitution guarantees the essential rights and freedoms of all individuals within the jurisdiction of the United States. State constitutions and laws may, and sometimes do, provide stronger protections than federal law (for example, in the area of freedom of religion and expression), but none may fall below the basic guarantees of the federal Constitution.

50. Under article VI of the U.S. Constitution, duly ratified treaties become part of the "supreme law of the land" with a legal status equivalent to enacted federal statutes. As such, they prevail over previously enacted federal law (to the extent of any conflict) and over any inconsistent state or local law. Since existing U.S. law - through constitutional and statutory protections against, and remedies for, racial discrimination - complies with obligations assumed by the United States under the Convention, it was deemed unnecessary, at the time of ratification, to propose implementing legislation.

51. The essential guarantees of human rights and fundamental freedoms within the United States are set forth in the U.S. Constitution and statutes of the United States, as well as the constitutions and statutes of the U.S. states and other constituent units. In practice, the enforcement of these guarantees ultimately depends on the existence of an independent judiciary with the power to invalidate acts of the other branches of government that conflict with those guarantees. Maintenance of a republican form of government with vigorous democratic traditions, popularly elected executives and legislatures, and the deeply rooted legal protections of freedoms of opinion, expression, religion and the press all contribute to the protection of human rights against governmental limitation and encroachment.

52. There is no single statute, institution or mechanism in the United States by which internationally recognized human rights and fundamental freedoms are guaranteed or enforced. Rather, domestic law provides extensive protections through various constitutional provisions

and statutes which typically create administrative and judicial remedies at both the federal and state levels. Responsibility for identifying violations and enforcing compliance is therefore shared among the various branches at all levels of government. In practice, a major impetus for the protection of statutory and constitutional rights derives from individual remedial actions, advocacy by non-governmental organizations, legislative and federal agency monitoring and oversight, and the ameliorative efforts of a free and energetic press.

53. Several parts of the Federal Government bear special responsibilities for matters directly relevant to this Convention.

54. U.S. Department of Justice. The Civil Rights Division of the Department of Justice serves as the chief civil rights enforcement agency for the Federal Government, charged with the effective enforcement of federal civil rights laws, in particular the Civil Rights Acts of 1964 and 1991, and the Voting Rights Act of 1965. The Civil Rights Division also exercises the authority given to the Attorney-General under Executive Order No. 12250 to ensure consistent and effective enforcement of laws prohibiting, among other things, discrimination on the basis of race, colour, national origin, religion, or sex in programmes and activities receiving federal financial assistance, as well as on the basis of disability in programmes receiving federal financial assistance and conducted by federal agencies. The Division also enforces laws prohibiting patterns or practices of police misconduct (42 U.S.C. sec. 14141), protecting the constitutional and federal statutory rights of persons confined to certain institutions owned or operated by state or local governments, such as prisons, jails, nursing homes, and mental health facilities (the Civil Rights of Institutionalized Persons Act (CRIPA)), and the Equal Credit Opportunity Act and the Fair Housing Act (the Department of Justice shares responsibility for administration of the latter statute with the Department of Housing and Urban Development). Under these various statutes, the Division may bring civil actions to enjoin acts or patterns of conduct that violate constitutional rights. In its civil cases, the Justice Department's responsibilities permit it to go to federal court to seek broad remedial orders that may include compensatory damages, civil penalties, injunctive relief and, in some cases, punitive damages.

55. The Division also has authority to prosecute criminally those who use force or threat of force to violate a person's rights to non-discrimination (so called "hate crimes") and state and local law enforcement officers who engage in the use of excessive force (18 U.S.C. sec. 242).

56. The Community Relations Service (CRS), an independent agency within the Justice Department, is the Federal Government's "peacemaker" for community conflicts and tensions arising from differences of race, colour and national origin. Created by the Civil Rights Act of 1964, CRS is the only federal agency whose purpose is to assist state and local units of government, private and public organizations, and community groups with preventing and resolving racial and ethnic tensions, conflicts and civil disorders, and in restoring racial stability and harmony.

57. Within the Department of Justice, the Office of Special Counsel for Immigration Related Unfair Employment Practices enforces prohibitions against citizenship status discrimination in employment, national origin discrimination by small employers, and document abuse associated with employer sanctions.

58. U.S. Equal Employment Opportunity Commission. The Equal Employment Opportunity Commission (EEOC), an independent, bipartisan agency within the executive branch established by the Civil Rights Act of 1964, has enforcement and compliance responsibilities concerning the elimination of discrimination based on race, colour, national origin, religion, gender, age and disability by private and public employers in all aspects of the employment relationship.

59. Since its inception, the EEOC has obtained over $2.2 billion in monetary benefits for parties bringing discrimination charges through administrative actions, i.e., through conciliation and settlement. In 1999 alone, the EEOC obtained over $210 million in these actions.

60. U.S. Commission on Civil Rights. While not an enforcement agency, the U.S. Commission on Civil Rights also plays an important role in safeguarding the rights recognized by the Convention. The Commission has a broad mandate to monitor and report on the status of civil rights protections in the United States. As an independent, bipartisan agency, it collects information on discrimination or denials of equal protection of the laws because of race, colour, and national origin, evaluates federal laws, and makes recommendations to the President and the Congress based on the effectiveness of governmental equal opportunity and civil rights programmes.

61. Other federal departments and agencies also have important enforcement responsibilities. For example:

(a) Within the Department of Education, the Office for Civil Rights is charged with administering and enforcing civil rights laws related to education, including desegregation of the country's elementary and secondary schools. This office gives particular attention to discrimination against minorities in special education and remedial courses, in math and science and advanced placement courses, in the use of tests and assessments, and in higher education admissions;

(b) The Assistant Secretary for Fair Housing and Equal Opportunity within the Department of Housing and Urban Development (HUD) administers the laws prohibiting discrimination in public and private housing and ensures equal opportunity in all community development programmes. HUD's Office of Fair Housing and Equal Opportunity administers two grant programmes: the Fair Housing Assistance programme (which provides financial assistance to supplement enforcement activities at the state and local levels) and the Fair Housing Initiatives Program (a competitive grant programme to provide funding to private fair housing groups);

(c) The Office of Civil Rights within the Department of Health and Human Services administers civil rights laws prohibiting discrimination in federally assisted health and human services programmes, with particular emphasis on areas of managed care, quality of health care, inter-ethnic adoption, services to limited-English-proficient persons, and welfare reform;

(d) Within the Department of Labour, the Office of Federal Contract Compliance Programs administers laws prohibiting discrimination and requiring affirmative action in employment by federal contractors and subcontractors on the bases of race, gender, national

origin and other grounds. The Department's Civil Rights Centre enforces laws prohibiting discrimination by recipients of federal financial assistance from the Department of Labour on the bases of race, religion, national origin, gender, disability and other grounds;

(e) Within the Department of Agriculture (USDA), civil rights programmes are aimed at ensuring that all USDA customers are treated fairly and equitably. In 1997, USDA appointed a Civil Rights Action Team to address allegations of discrimination against minority farmers in the United States. As a result of its investigations, the Team concluded that minority farmers had indeed lost significant amounts of land and potential farm income as a result of discriminatory practices by the USDA. That same year, a major class action lawsuit was filed against the United States and the USDA alleging widespread discrimination against Black farmers in the United States. As a result of the lawsuit, a consent decree has been entered, establishing a claims mechanism through which individual class members can resolve their complaints in an expeditious and fair manner. To date, 11,120 Black farmers have received over $323 million in compensation;

(f) The Office for Equal Opportunity within the Department of the Interior administers laws prohibiting discrimination based on race, colour, and national origin in federally assisted and federal employment programmes. These programmes ensure that state and local park, recreation, fishing, hunting, and historic preservation programmes and activities are provided to individuals in the United States on an equal opportunity basis regardless of race, colour, or national origin. In addition, this office enforces compliance with civil rights laws with respect to employment in state natural resource programmes and administers civil rights laws prohibiting unlawful discrimination against employees of, and applicants for employment with, the Department of Interior;

(g) Within the Department of Defense, the Deputy Assistant Secretary for Equal Opportunity is responsible for implementing and monitoring the Department's civilian and military equal opportunity/affirmative action plan goals and objectives.

62. In addition to the agencies listed, virtually all federal agencies that provide federal financial assistance have civil rights offices whose responsibility it is to ensure that recipients of that assistance do not engage in unlawful discrimination. This includes the major providers of federal assistance such as the Departments of Agriculture, Commerce, Education, Health and Human Services, Housing and Urban Development, Justice, Labour, Transportation, and Veterans' Affairs. All 28 federal providers of federal assistance are responsible for ensuring that their recipients do not discriminate, and the Civil Rights Division of the Justice Department is responsible for ensuring that all federal funding agencies effectively and consistently enforce their non-discrimination responsibilities.

63. Furthermore, a number of federal agencies, including the Environmental Protection Agency, the Federal Emergency Management Agency, the Federal Communications Commission and the Departments of Agriculture, Energy, Commerce, Defense, Health and Human Services, Housing and Urban Development, Justice and Labour have established offices

or points of contact to specifically address issues affecting Native Americans, their lands and resources. Also, many of these agencies have developed agency-wide policies, based on the concepts of self-governance, the federal trust responsibility, consultation and the government-to-government relationship to guide their work with Indian tribes.

64. In the U.S. Congress, special emphasis has long been given to matters involving discrimination on the basis of race, colour, national origin, and ethnicity. In addition to the oversight functions of various standing committees in both Houses (such as the Judiciary and Indian Affairs Committees in the Senate, and the Committees on Commerce and the Judiciary in the House of Representatives), attention is focused through other mechanisms such as the Asian Pacific, Black, Hispanic, Native American and Human Rights Caucuses.

D. Information and publicity

65. In the United States, information about human rights is readily available. As a general matter, people are well informed about their civil and political rights, including the rights of equal protection, due process, and non-discrimination. The scope, meaning and enforcement of individual rights are openly and vigorously discussed in the media, freely debated within the various political parties and representative institutions, and litigated before the courts at all levels.

66. Information about human rights treaties is freely and readily available to any interested person in the United States. The constitutional requirement that the U.S. Senate give its advice and consent to ratification of a treaty ensures that there is a public record of its consideration, typically on the basis of a formal transmittal by the President, a record of the Senate Foreign Relations Committee's hearing and report to the full Senate, and the action of the Senate itself. Moreover, the text of any treaty, whether or not the United States is a party, can be readily obtained from any number of sources, including the Library of Congress, public libraries, educational institutions and non-governmental organizations.

67. Increasingly, over the last few years information about human rights, civil rights and related subjects has become available on the Internet. For example, the Department of Justice Web site <http://www.usdoj.gov> includes information about the Civil Rights Division, links to all sections of the Division that include information about settlements, high profile cases, the laws enforced by each section, contact information for each section, information on special topics, selected judicial decisions, and legal briefs filed by the Division. The U.S. Commission on Civil Rights Web site <http://www.usccr.gov> includes a description of the Commission's duties, function and composition as well as information on how to file complaints and contact the Commission. The U.S. Equal Employment Opportunity Commission Web site <http://www.eeoc.gov> includes guidance directed to employers and employees, information about the EEOC, enforcement statistics, and selected civil rights laws, regulations and guidance. Individuals can also find helpful information at the fair housing section of the U.S. Department of Housing and Urban Development Web site <http://www.hud.gov/fairhsg1.html> where individuals can file housing discrimination complaints on-line. The Department of Interior Diversity Web site <http://www.ios.doi.diversity.gov> includes information on all Department

of Interior civil rights policies and programmes, special employment programmes, complaint processing procedures for employees and applicants and for individuals filing complaints against federally assisted state agency programmes. The Department of Interior's Office of Insular Affairs operates a Web site <http://www.doi.gov/oia> that includes fact sheets detailing the Federal Government's responsibilities to and protection of the indigenous peoples of the U.S. insular areas of the United States. A comprehensive listing of Federal Government Web sites providing information about the civil rights enforcement efforts of agencies providing federal financial assistance can be found at the Internet site of the Justice Department Civil Rights Division's Coordination and Review Section, <http://www.usdoj.gov/ctr/cor>. Numerous other Web sites, operated by U.S. government agencies as well as by NGOs, include helpful information on civil rights, racial discrimination and legal remedies in the United States.

68. In the case of the International Convention on the Elimination of All Forms of Racial Discrimination, the record of its consideration is set forth in several official documents, including the Initial Message from the President transmitting the Convention to the Senate on 23 February 1978 (Sen. Exec. Doc. 95-C); the printed record of the public hearings before the Senate Foreign Relations Committee on 11 May 1994 (S. Hrg. 103-659); the Report and Recommendation of the Senate Foreign Relations Committee, dated 2 June 1994 (Sen. Exec. Rep. 103-29), and the record of consideration on the floor of the Senate (Cong. Rec. S6601, daily ed. 8 June 1994).

69. At the May 1994 hearing before the Senate Foreign Relations Committee, representatives of various non-governmental organizations involved in human rights, as well as concerned academics and legal practitioners, testified in person or submitted written comments for consideration by the committee and for inclusion in its formal records. The Administration was represented by the Assistant Attorney-General for Civil Rights, the Assistant Secretary of State for Democracy, Human Rights and Labour, and the Legal Adviser of the Department of State.

70. As part of the United States' programme to increase public awareness of human rights obligations, this report will be published and made available to the public through the Government Printing Office and the depositary library system, as was done with the U.S. reports on compliance with the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Copies of the report and of the Convention will also be widely distributed within the executive branch of the U.S. Government and to federal judicial authorities, as well as to relevant state officials, state and local bar associations, and non-governmental human rights organizations. The report and the convention will also be available on the Department of State Web site at <http://www.state.gov>.

E. Factors affecting implementation

71. Although there has been significant progress in the improvement of race relations in the United States over the past half-century, serious obstacles remain to be overcome. Overt discrimination is far less pervasive than it was 30 years ago, yet more subtle forms of

discrimination against minority individuals and groups persist in American society. In its contemporary dimensions discrimination takes a variety of forms, some more subtle and elusive than others. Among the principal causative factors are:

(a) The persistence of attitudes, policies and practices reflecting a legacy of segregation, ignorance, stereotyping, discrimination and disparities in opportunity and achievement;

(b) Inadequate enforcement of existing anti-discrimination laws due to under-funding of federal and state civil rights agencies. Resource limitations cause delays in investigation, compliance review, technical assistance and enforcement;

(c) Ineffective use and dissemination of data on racial and ethnic issues and information on civil rights protection. Too many persons do not believe that racial discrimination is a common or active form of mistreatment and are therefore less supportive of race-conscious remedial actions. Moreover, many minority groups do not have adequate information about Government-funded programmes and activities because information is not distributed in languages they can understand in often remote areas throughout the United States. This is particularly true for some American Indian and Alaska Native populations;

(d) Economic disadvantage. In the contemporary United States, persons belonging to minority groups are disproportionately at the bottom of the income distribution curve. While it is inaccurate to equate minority status with poverty, members of minority groups are nonetheless more likely to be poor than are non-minorities. It is also true, in the United States as elsewhere, that almost every form of disease and disability is more prevalent among the poor, that the poor face higher levels of unemployment, that they achieve lower educational levels, that they are more frequently victimized by crime, and that they tend to live in environments (both urban and rural) which exacerbate these problems;

(e) Persistent discrimination in employment and labour relations, especially in the areas of hiring, salary and compensation, but also in tenure, training, promotion, layoff and in the work environment generally. Over the past few years, for example, complaints have been levelled against several major employers including Texaco, Shoney's, General Motors, Pitney Bowes and Avis;

(f) Continued segregation and discrimination in housing, rental and sales of homes, public accommodation and consumer goods. Even where civil rights laws prohibit segregation and discrimination in these areas, such practices continue;

(g) Lack of equal access to business capital and credit markets. Minorities continue to have difficulty raising capital or securing loans to finance a business. Without sufficient access to such financial markets, minority entrepreneurs will continue to start and grow businesses at a much slower rate than their White counterparts. This problem further lessens the prospects of wealth creation in under-served communities, thus perpetuating the cycle of poverty that disproportionately affects minorities;

(h) Lack of access to technology and high technology skills. Despite the rapid development of the Internet and other information technologies, minorities have participated at lower rates in the so-called "new economy" because they lack the skills necessary to fill the numerous technology jobs created every day. Technology-based jobs are projected to be a large percentage of new jobs that will be created over the next 10 years. If minorities are not trained with information technology skills, a large number of workers will be unable to benefit from the tremendous wealth generated by this segment of the economy;

(i) Lack of educational opportunities. Largely because of the persistence of residential segregation and so-called "White flight" from the public school systems in many larger urban areas, minorities often attend comparatively under-funded (and thus lower-quality) primary and secondary schools. Thus minority children are often less prepared to compete for slots in competitive universities and jobs. While efforts to dismantle segregation in our nation's schools have enjoyed some success, segregation remains a problem both in and among our schools, especially given reductions in affirmative action programmes;

(j) Discrimination in the criminal justice system. The negative overall impact of the criminal justice system on Blacks, Hispanics and members of other minority groups is another barrier to our achieving the goals of the Convention. Various studies indicate that members of minority groups, especially Blacks and Hispanics, may be disproportionately subject to adverse treatment throughout the criminal justice process. High incarceration rates for minorities have led to the political disenfranchisement of a significant segment of the U.S. population. Moreover, many have raised concerns that incidents of police brutality seem to target disproportionately individuals belonging to racial or ethnic minorities;

(k) Disadvantages for women and children of racial minorities. Often, the consequences of racism and racial discrimination are heightened for women and children. Whether in the criminal justice system, education, employment or health care, women and children suffer discrimination disproportionately. Startlingly high incarceration rates for minority women and children have placed them at a substantial social, economic and political disadvantage;

(l) Health care. Persons belonging to minority groups tend to have less adequate access to health insurance and health care. Historically, ethnic and racial minorities were excluded from obtaining private insurance, and although such discriminatory practices are now prohibited by law, statistics continue to reflect that persons belonging to minority groups, particularly the poor, are less likely to have adequate health insurance than White persons. Racial and ethnic minorities also appear to have suffered disproportionately the effects of major epidemics like AIDS. For example, in 1999, 54 per cent of new cases of HIV infection occurred among Blacks, even though they make up less than 15 per cent of the population;

(m) Voting. While the Voting Rights Act has made it possible for Blacks and Hispanics to obtain an equal opportunity to elect their candidates of choice to local, state, and federal office, the federal courts - since the early 1990s - have become more restrictive in permitting race-conscious apportionment of voting districts. Thus, many of the gains made by minority voters in the 1970s and 1980s have been jeopardized;

(n) Discrimination against immigrants. Whether legal or illegal, recent immigrants often encounter discrimination in employment, education and housing as a result of persistent racism and xenophobia. Some also contend that U.S. immigration law and policy is either implicitly or explicitly based on improper racial, ethnic and national criteria. Language barriers have also created difficulties of access, inter alia, to health care, education and voting rights for some.

72. Specific examples of these shortcomings include the following incidents:

(a) On 8 June 1998, James Byrd, Jr., a Black man, was chained to the back of a pickup truck and dragged to his death in Jasper, Texas. Two of the three young White men who killed James Byrd were connected with White supremacist groups. The three men accused of committing this crime were successfully prosecuted under Texas law by the State of Texas, with the assistance of the U.S. Department of Justice. Two received the death penalty; the third was sentenced to life imprisonment;

(b) One of the most high-profile cases in recent years was the videotaped beating of Rodney King by officers of the Los Angeles Police Department. After the police officers were acquitted on state charges, riots broke out in Los Angeles and in other cities throughout the country. Subsequent to these acquittals, however, two of the four officers involved were convicted on federal charges and sentenced to 30 months in prison;

(c) In 1999, Black guests of the Adams Mark Hotel during the Black College Reunion in Daytona Beach, Florida were allegedly mistreated, including being required to wear wristbands identifying them as guests of the hotel, while White guests did not receive such treatment. The Department of Justice filed suit against the hotel, and pursuant to a proposed settlement, the hotel chain will agree, inter alia, to adopt a comprehensive plan to ensure that every hotel will be operated in a non-discriminatory fashion;

(d) The Civil Rights Division of the U.S. Department of Justice has initiated several investigations into allegations of discriminatory highway traffic stops and discriminatory stops of persons travelling in urban areas (so-called "racial profiling") by state and local law enforcement authorities. Its investigation of the New Jersey state police led to a lawsuit and consent decree emphasizing non-discrimination in policy and practices as well as improved data collection, training, supervision and monitoring of officers. A similar agreement was reached with the Montgomery County, Maryland, Police Department;

(e) In Jackson, Mississippi, more than 200 Blacks were allegedly denied home improvement loans even though they received passing scores on credit scoring systems. Black applicants were more than three times more likely to have their loan applications denied than similarly situated White applicants. The United States filed a lawsuit, which was settled in the amount of $3 million, to be paid to Black applicants who had been denied loans;

(f) Throughout the United States, primary and secondary schools, colleges and universities, and professional sports teams use depictions of Native Americans as mascots. Native American groups have challenged these uses on the basis that they are demeaning and offensive.

II. INFORMATION RELATING TO ARTICLES 2 TO 7

73. Since its Civil War, the United States has worked to develop the proper configuration of constitutional, statutory and voluntary cooperation to transform race relations from conditions of political and economic domination by the White, landed gentry to legal and actual parity for all U.S. residents. Because the relevant laws derive from specific historical and social circumstances over a lengthy period, they have taken shape in a manner which does not directly parallel the specific articles of the Convention. Moreover, some aspects of this body of law, and of the national political structure, caused the United States to condition its adherence to the Convention on a few precisely crafted reservations, understandings and declarations. Given these facts, it is useful to preface the discussion of the specific articles with the following background information.

A. Prohibition of racial discrimination

74. Existing U.S. Constitutional and statutory law and practice provide strong and effective protections against discrimination on the basis of race, colour, ethnicity or national origin in all fields of public endeavour and provide remedies for anyone who, despite these protections, becomes a victim of discriminatory acts or practices anywhere within the United States or subject to its jurisdiction. Especially since the landmark 1954 decision of the U.S. Supreme Court in Brown v. Board of Education, the notion of racial equality has been fundamental to the constitutional and statutory law of the United States.

1. United States Constitution

75. The constitutional protections against racial discrimination are contained in the Thirteenth, Fourteenth and Fifteenth Amendments, all of which were ratified in a five-year period following the conclusion of the Civil War in 1865, and in the Fifth Amendment, which since 1954 has been construed to forbid the Federal Government from engaging in racial discrimination.

Thirteenth Amendment

76. The Thirteenth Amendment abolished slavery. Section 2 of the Amendment authorizes Congress to enforce the prohibition of slavery through "appropriate legislation". The Amendment has been interpreted broadly, not only to abolish slavery, but also to permit Congress to eliminate the "badges and incidents of slavery", i.e., those vestiges of custom, practice and private action that were the legacy of slavery (Jones v. Alfred H. Mayer Co., 392 U.S. 409, 440 (1968)). As set forth below, civil rights statutes have been enacted pursuant to this interpretation of Section 2 of the Thirteenth Amendment. The Thirteenth Amendment and legislation implementing its commands are fully consistent with the Convention and substantially further its goals.

Fifth and Fourteenth Amendments

77. The part of the Fourteenth Amendment that speaks to racial discrimination is the Equal Protection Clause, which provides that "[n]o State shall deny to any person within its jurisdiction the equal protection of the laws". Equal protection strictures apply to the Federal Government through the Due Process Clause of the Fifth Amendment (Bolling v. Sharpe, 347 U.S. 497 (1954)).

78. The Fourteenth Amendment was enacted in the period immediately after the end of the U.S. Civil War, a time at which federalism issues were much at the forefront of the nation's juridical consciousness. The drafters of the Fourteenth Amendment intended that its prohibition on States' making or enforcing "any law which shall abridge the privileges or immunities of citizens of the United States", would protect the fundamental rights of U.S. citizens, particularly civil rights, from state encroachment.

79. However, for almost 100 years after the enactment of the Fourteenth Amendment, the federal courts refused to apply its principles to state-sponsored racial discrimination and de jure segregation. Thus, this kind of unequal treatment was the rule, rather than the exception, all over the United States until the middle of the twentieth century. In 1954, the U.S. Supreme Court, for the first time, applied the Fourteenth Amendment's requirements of "equal protection under the law" against the states and ushered into U.S. law the idea that state-sponsored segregation was antithetical to the country's fundamental principles. See Brown v. Board of Education, 347 U.S. 483 (1954).

80. Since Brown, the U.S. Supreme Court has interpreted the Equal Protection Clause of the Fourteenth Amendment as a "direction that all persons similarly situated should be treated alike" (Cleburne v. Cleburne Living Centre, Inc., 473 U.S. 432, 439 (1985)). In essence, it precludes governments from adopting unjustifiable legal distinctions between groups of people (Plyler v. Doe, 457 U.S. 202, 216-219 (1982)). Over time, the Supreme Court has made plain that distinctions based on race or national origin are inherently suspect, and thus are rarely justifiable (McLaughlin v. Florida, 379 U.S. 184, 192 (1964)). When challenged in court, such distinctions are subject to "strict scrutiny", the most exacting standard of constitutional review. Under strict scrutiny, a classification violates the Equal Protection Clause unless it is necessary to promote a "compelling state interest" and is "narrowly tailored" to achieve that interest (Palmore v. Sidotti, 466 U.S. 429, 432 (1984)). In practice, most racial or ethnic classifications fail to satisfy those standards (Bernal v. Fainter, 467 U.S. 216, 219 n.6 (1984)). Strict scrutiny applies not only to laws that specifically categorize individuals on the basis of race or ethnicity, but also to ostensibly neutral laws that are enforced only against certain racial or ethnic groups (Personnel Administrator v. Feeney, 442 U.S. 256, 277 (1979) (citing Yick Wo v. Hopkins, 118 U.S. 356 (1886)).

81. Even where racial or ethnic classifications are not at issue, strict scrutiny applies to legal distinctions that the Supreme Court has determined interfere with the exercise of certain fundamental rights. Under this strand of equal protection doctrine, the Supreme Court has invalidated discriminatory measures in the areas of voting (Harper v. Virginia State Board of Education, 383 U.S. 663 (1966)), inter-state and foreign travel (Aptheker v. Secretary of State, 378 U.S. 500 (1964)), and access to the judiciary (Griffin v. Illinois, 351 U.S. 12 (1956)).

82. In short, the Equal Protection Clause, as interpreted by the Supreme Court is consistent with the enumerated guarantees of article 5 of the Convention.

Fifteenth Amendment

83. The last of the post-Civil War era Amendments, the Fifteenth Amendment provides that the right to vote "shall not be denied or abridged by the United States or by any state on account of race, colour, or previous condition of servitude". This amendment, in conjunction with the Fourteenth Amendment, is the basis of some of the federal legislation protecting the right of individuals to vote and to participate in the political process free from discrimination based on race or ethnicity. For the first few years after the enactment of the Fifteenth Amendment, Blacks in the United States exercised their right to vote in strong numbers in the South. However, because of a combination of forces (e.g., the resurgence of the Ku Klux Klan, often acting with the complicity of local law enforcement) and the imposition of restrictive voting qualifications in many southern states (such as the poll tax and literacy tests, often administered in a discriminatory manner), Blacks in the South were once again locked out of the electoral process. In the years between 1876 and the mid-1960s, neither Congress nor the federal courts took action to combat the efforts by southern states to prevent Blacks from participating in the political process. However, after years of struggle, lead by the efforts of Martin Luther King, Jr. and others, in 1964 the country ratified the Twenty-fourth Amendment to the Constitution prohibiting the requirement of payment of a poll tax as a qualification for voting for federal offices, and in 1965 the U.S. Congress enacted the Voting Rights Act which made real the Fifteenth Amendment's prohibition against discrimination in voting. This constitutional and statutory framework is consistent with the voting guarantee among the rights recognized by article 5 of the Convention.

2. Federal legislation

84. Since the Civil War, Congress has adopted a number of statutes designed to supplement and expand upon the prohibitions of the Thirteenth, Fourteenth and Fifteenth Amendments in an effort to eliminate racial discrimination in a broad range of governmental, economic and social activity.

The 1866 and 1871 Civil Rights Acts

85. These post-Civil War, Reconstruction Era statutes prohibit racial discrimination in both the civil and criminal arenas. As codified at 42 U.S.C. sec. 1981-1985, racial discrimination is prohibited in the making and enforcement of private contracts, including employment, education, health care and recreational facilities (sec. 1981) and in the inheritance, purchase, sale or lease of real and personal property (sec. 1982). They also create a cause of action for civil damages against anyone who under "colour of law" subjects another to unlawful discrimination (sec. 1983), as well as those who conspire to deprive individuals of their federally secured rights (sec. 1985). Similar prohibitions apply in the criminal context, including the prohibition against conspiracies (public or private) to "injure, oppress, threaten or intimidate" any person in the exercise of any constitutional or other federally protected right (18 U.S.C. sec. 241); and against the wilful deprivation of rights under "colour of law" (18 U.S.C. sec. 242) (used most frequently to prosecute law enforcement officials for acts of excessive force).

86. With its review of The Slaughter-House Cases, 83 U.S. (16 Wall.) 36, in 1873 the U.S. Supreme Court had its first opportunity to examine the scope of the Reconstruction amendments to the U.S. Constitution, and thereby establish the extent of the Federal Government's authority to legislate in the area of civil rights. In rejecting a Thirteenth and Fourteenth Amendment challenge to a Louisiana statute granting a monopoly to engage in the slaughterhouse business in New Orleans, the Court concluded that neither the Thirteenth Amendment nor the privileges and immunities or due process clauses of the Fourteenth Amendment could be interpreted to create a prohibition against discrimination by the states against groups of their citizens. Such a reading, the Court held, would "radically [change] the whole theory of the relations of the state and federal governments to each other and both of these governments of the people".

87. The Supreme Court's opinion in The Slaughter-House Cases substantially slowed the momentum to provide federal civil rights protections during the Reconstruction Era. Based on the Court's reasoning, numerous statutes enacted for the protection of the newly freed slaves were invalidated. This judicial dismantling of Reconstruction Era legislation was accompanied by a collapse in the political coalition behind the Reconstruction movement. The result was a hodgepodge of state civil rights protections, many of which were either weak, or rarely enforced where they existed at all. It was not until the mid-twentieth century and the passage of the Civil Rights Act of 1964 that strong, comprehensive federal protection for civil rights was established.

The Civil Rights Act of 1964

88. Often described as the most important civil rights legislation in U.S. law, this statute prohibits discriminatory acts involving public accommodation (Title II), education (Title IV), federally funded programmes (Title VI) and employment (Title VII). This legislation has been repeatedly amended in the years since 1964. See, e.g., Pub.L. 102-166 (1991) (establishing the burden of proof in Title VII disparate impact cases, prohibiting the discriminatory use of test scores, refining the definition of an unlawful business practice, and extending coverage to U.S.-controlled foreign corporations); Pub.L. 92-261, sec. 2 (2) (1972) (extending the statute to state and local government employers, eliminating the exemption for the employment of individuals engaged in the educational activities of non-religious educational institutions, and extending its coverage to applicants for employment or membership in organizations); see also Glass Ceiling Act, Pub.L. 102-166, Title II (1991) (establishing a commission to study issues related to the under-representation of women and minorities in management and decision-making positions in business).

89. Title II of the Act, codified at 42 U.S.C. sec. 2000a, prohibits discrimination on the basis of "race, colour, religion or national origin" in places of "public accommodation", which are defined to include establishments affecting commerce that are hotels, motels and other lodging, restaurants and other places serving food, theatres, concert halls, sports stadiums and other places of entertainment or exhibition and gasoline stations.

90. Title IV, codified at 42 U.S.C. sec. 2000c et seq., provides for the orderly desegregation of public schools and for non-discriminatory admissions to public colleges and universities.

91. Title VI, codified at 42 U.S.C. sec. 2000d et seq., provides that no person in the United States shall be excluded from participation in, or denied the benefits of, any federally-funded or assisted programme or activity on account of race, colour or national origin. This provision has had a particularly salutary effect in the continuing efforts to eliminate de jure school and housing segregation.

92. Title VII, codified at 42 U.S.C. sec. 2000e et seq., is the primary federal statute addressing discrimination in employment. Subject to certain exceptions, it prohibits discrimination on the basis of, inter alia, race, colour and national origin in hiring, compensation, conditions of employment and dismissals by employers (defined as those that employ more than 15 employees), labour organizations and employment agencies affecting commerce. In addition, employers are prohibited from engaging in intentional discrimination on the basis of race by 42 U.S.C. section 1981. Complaints under Title VII are initially filed with the Equal Employment Opportunity Commission. Those complaints filed against state or local government employers can be referred to the Department of Justice for enforcement in federal court. In 1991, Congress amended Title VII to provide additional remedies for intentional discrimination in the workplace.

The Voting Rights Act of 1965

93. Among the most fundamental rights in any democratic system is the right to participate freely in the government of one's country without discrimination on the basis of race, colour or national origin. In the United States, the Fifteenth Amendment, ratified in 1870, prohibits denial or abridgement of the right to vote on account of race, colour or previous condition of servitude. While in the northern, non-slave-holding states, Blacks frequently (but not uniformly) were already enfranchised, the Fifteenth Amendment and legislation adopted at that time to enforce it did not lead to the permanent enfranchisement of Blacks in the former slave-holding states. In response to the Fifteenth Amendment, many states, through a combination of physical and economic coercion and through the use of state legal systems, had almost totally excluded Blacks from the political process in several southern states by the end of the nineteenth century. Through the work of civil rights activists such as Martin Luther King, Jr., the NAACP Legal Defense Fund and others, a nation-wide political movement created a sea change in the country by the middle of the twentieth century.

94. As a result, through a series of lawsuits decided by the Supreme Court of the United States, Civil Rights Acts enacted by the United States Congress in 1957, 1960, and 1964, and especially the Voting Rights Act of 1965, Blacks and other racial and ethnic minorities have gained the right to vote free from racial discrimination in every part of the United States.

95. The Voting Rights Act has been extended or strengthened by Congress on several occasions (1970, 1975, 1982, and 1992) and has been interpreted or amended to protect all racial or ethnic minority groups, including language minorities. The Act authorizes the United States Attorney-General and private parties to bring lawsuits in federal court to enforce the Fifteenth Amendment to ensure that minority voters are afforded an equal opportunity to elect their candidates of choice to state, local, and federal office. The Act also bans the use of literacy tests and other tests and devices which had been applied in a discriminatory manner to disqualify eligible minority applicants from being able to register to vote. In addition to general provisions

banning discriminatory practices that apply to the entire nation, the Act has specialized mechanisms that apply to areas of the country with the most severe history of discrimination against Blacks. This part of the Act requires federal pre-approval for any proposed changes in voting laws and practices to prevent the implementation of new discriminatory laws and practices; authorization of federal observers to monitor elections to assure that minority voters are permitted to vote free from discrimination or intimidation, and that their votes are actually counted; and the provision of bilingual voting information and assistance is required in certain areas of the country.

The Fair Housing Act

96. This statute, originally enacted as Title VIII of the Civil Rights Act of 1968 and amended by the Fair Housing Amendments Act of 1988, is codified at 42 U.S.C. sec. 3601-19. It prohibits discrimination on the grounds, inter alia, of race, colour, religion, or national origin in the sale or rental of housing as well as in other real estate related transactions (i.e., lending, insurance, and appraisal practices) and brokerage services. Exceptions are provided for private clubs, single family dwellings and owner-occupied boarding houses with no more than three other family units, except when the owner uses the services of real estate brokers or others. It also includes a criminal provision, 42 U.S.C. sec. 3631, which makes it a federal crime for any person to use force or the threat of force wilfully to injure, intimidate, or interfere with, or attempt to injure, intimidate or interfere with any person because of his or her race, colour, religion, sex or handicap, and because he or she is exercising federally protected housing rights. This statute is used, for example, to prosecute cross-burnings and other racially motivated threats and violence directed at people in their homes.

Civil Rights Act of 1968

97. One of the statutes promulgated under this Act was 18 U.S.C. sec. 245, a criminal statute which, inter alia, prohibits any person from using force or wilful threats to injure, intimidate, or interfere with, or attempt to injure, intimidate or interfere with any person because of his or her race, colour, religion or national origin, and because he or she is engaging in certain federally protected rights, including rights related to education, employment, and the use of public facilities and establishments which serve the public.

Protection of Religious Property

98. Passed in 1988, and amended in 1996, 18 U.S.C. section 247 makes it a crime to deface, damage or destroy religious property because of the race, colour, or ethnic characteristics of any individual associated with that property. This statute has been used, for example, to prosecute racially motivated church arson, and the painting of anti-Semitic graffiti on and within a Jewish synagogue.

American Indian Religious Freedom Act, 42 U.S.C. sec. 1996

99. Enacted in 1978, then amended in 1996, this Act resolves that it shall be the policy of the United States to protect and preserve for the American Indian, Eskimo, Aleut and Native Hawaiian the inherent right to freedom to believe, express and exercise their traditional religions,

including access to religious sites, use and possession of sacred objects and freedom to worship through ceremonial and traditional rites. Federal agencies are directed to evaluate their policies and procedures to determine if changes are needed to ensure that such rights and freedoms are not disrupted by agency practices. The courts have interpreted this act to require that the views of Indian leaders be obtained and considered when a proposed land use might conflict with traditional Indian religious beliefs or practices, and that unnecessary interference with Indian religious practices be avoided during project implementation.

Protection of Traditional Rights in American Samoa, 48 U.S.C. sec. 1661 (a)

100. In 1929 the Congress accepted and ratified the cessions of Tutuila and Aunu'u (1900) and Manu'a (1904) by the islands' traditional leaders and thereby confirmed that the Federal Government would "respect and protect the individual rights of all people dwelling in Tutuila and Aunu'u to their lands and other property" and "no[t] discriminat[e] in the suffrages and political privileges between the present residents of said Islands [Manu'a] and citizens of the United States dwelling therein, and also [recognize] ... the rights of ... all people concerning their property according to their customs".

Equal Credit Opportunity Act, 15 U.S.C. sec. 1691 et seq.

101. The Equal Credit Opportunity Act makes it unlawful for any creditor to discriminate in a credit transaction on the basis of race, colour, religion, national origin, sex, marital status, age, or source of income (e.g., public benefits). Enforcement has focused on all aspects of the lending process from marketing to underwriting and pricing. For example, in 1997 the U.S. Department of Justice filed and settled a case alleging that Albank of New York engaged in so-called "redlining" by refusing to take mortgage loans from areas with significant minority populations. The settlement included an agreement by the bank to provide $55 million at below market rates to previously redlined areas. Cases have been brought on behalf of Blacks, Hispanics, Native Americans, women and the elderly both in major metropolitan areas such as Boston and Los Angeles and in less populated areas such as Mississippi and South Dakota.

Violent Crime Control and Law Enforcement Act of 1994

102. The Violent Crime Control and Law Enforcement Act of 1994 includes a provision, 42 U.S.C. sec. 14141, that authorizes the Department of Justice to file suit to enjoin a pattern or practice of unconstitutional or unlawful conduct by a state or local law enforcement agency. Misconduct that may be addressed includes discriminatory police practices, use of excessive force, false arrests, and improper searches and seizures.

Anti-discrimination Provision of the Immigration and Nationality Act (INA), 8 U.S.C. sec. 1324b

103. This law was enacted in 1986 in response to concerns that employers, faced with sanctions against knowingly hiring unauthorized immigrants, would refuse to hire people they perceived to be foreign based on their accent or appearance. The law prohibits citizenship status and national origin discrimination with respect to hiring, firing, or referral or recruitment for

a fee. The law also prohibits unfair documentary practices with respect to employment eligibility verification. All U.S. citizens and nationals and work-authorized immigrants are protected from national origin discrimination and unfair documentary practices. U.S. citizens and nationals, permanent residents, asylees, refugees, and temporary residents are protected from citizenship status discrimination.

Youth Conservation Corps Act of 1970, 16 U.S.C. sec. 1704

104. This Act requires assurances of non-discrimination in employment within the State Youth Conservation Corps in order for states to receive funds to cover Youth Conservation Corps projects.

Emergency Insured Student Loan Act of 1969, 20 U.S.C. sec. 1078 (c) (2) (F)

105. This Act requires adequate assurances that the loan guaranty agency will not engage in any pattern or practice which results in a denial of a borrower's access to loans under this part because of the borrower's race, sex, colour, religion, national origin, age, disabled status, income, attendance at a particular eligible institution within the area served by the guaranty agency, length of the borrower's educational programme, or the borrower's academic year in school.

Higher Education Act of 1965, 20 U.S.C. sec. 1011 et seq.

106. This law provides funds to higher education institutions and prohibits the schools from using these funds in programmes or contracts with discriminatory provisions barring students on the basis of race, national origin, sex, or religion. Through subsequent amendments, particularly those made in 1992 and in 1998, the Act has added programmes which provide insurance assistance to historically Black colleges and universities, Hispanic-serving institutions, and tribal colleges, and which encourage youth from disadvantaged backgrounds to gain early awareness and readiness for post-secondary education, e.g. through the "Gear-Up" programme, which funds partnerships of high-poverty middle schools, colleges and universities, community organizations, and businesses.

Bilingual Education Act of 1967, 20 U.S.C. sec. 7401 et seq.

107. This statute was enacted to ensure equal educational opportunities for all children and youth, through developing and funding programmes to assist limited-English-proficient children meet the same standards for academic performance expected of all children.

The Equal Educational Opportunities Act of 1974, 20 U.S.C. sec. 1703

108. This law requires the provision of equal educational opportunities in all public schools, whether or not they are federally funded, and it prohibits discrimination on the basis of race, national origin, colour, or sex, including the failure to take appropriate action to overcome language barriers that impede equal participation in instructional programmes.

Elementary and Secondary Education Act of 1965, 20 U.S.C. sec. 6301 et seq.

109. This Act provides federal aid to elementary and secondary schools, reinforcing the civil rights protections included in the 1964 Civil Rights Act. In particular, it provides for services to meet the special education needs of educationally deprived children, especially those children from low-income families.

Federal Family Education Loan Program, 20 U.S.C. sec. 1087-1 (e) (3)

110. This Act provides special allowance payments for loans financed by proceeds of tax-exempt obligations. It prohibits denial of a borrower's access to loans under this part because of the borrower's race, sex, colour, religion, national origin, age, handicapped status, income, attendance at a particular eligible institution, length of the borrower's educational programme, or the borrower's academic year in school.

Improving America's Schools Act of 1994, 20 U.S.C. sec. 7502 (b) (4)

111. This Act applies to any federally assisted education programme. It prohibits exclusion of students on the bases of surname or language-minority status. This Act also made far-reaching changes in the Elementary and Secondary Education Act to enable schools to provide opportunities for children to meet challenging State content and performance standards.

Alaska Natural Gas Transportation Act of 1976, 15 U.S.C. sec. 719 (o)

112. This Act provides funding for delivery of Alaska natural gas. It requires implementation of affirmative action policies to prevent discrimination on the basis of race, colour, national origin, sex or religion in the issuance of certificates, permits, rights-of-way, leases, or other authorizations under this Act.

Federal Energy Administration Act of 1974, 15 U.S.C. sec. 775

113. This Act also addresses funding for the delivery of Alaska natural gas. It requires implementation of affirmative action policies to prevent discrimination in programmes given certificates, permits, right-of-ways, lease, or other authorizations under this Act. It prohibits discrimination based on race, colour, national origin, sex, or religion.

Federal Non-nuclear Energy Research and Development Act of 1974, 42 U.S.C. sec. 5919 (v)

114. This Act provides funds for developing new non-nuclear energy options. It prohibits discrimination based on race, colour, national origin, sex, or religion.

Energy Conservation in Existing Buildings Act of 1976, 42 U.S.C. sec. 6870

115. This Act provides weatherization assistance for low-income persons. It prohibits discrimination based on race, colour, national origin, sex, or any other factor specified in any federal law prohibiting discrimination.

Violent Crime Control and Law Enforcement Act of 1994, 31 U.S.C. sec. 6711

116. This Act provides funding for crime prevention through education treatment, substance abuse or job programmes. It prohibits discrimination based on race, colour, national origin, sex, religion, age, and disability.

Housing and Community Development Act of 1974 (Title I), 42 U.S.C. sec. 5309

117. This Act authorizes the Community Development Block Grant. It prohibits discrimination based on race, colour, national origin, sex, religion, age, and disability.

Home Investment Partnerships Act/National Affordable Housing Act of 1975, 42 U.S.C. sec. 12832

118. This Act provides funding to increase affordable housing (including rental housing) for very low-income Americans. It prohibits discrimination based on race, colour, national origin, sex, religion, age, and disability.

Mining and Mineral Resources Institutes Act of 1984, 30 U.S.C. sec. 1222

119. This Act sets out recommendations regarding funding for mining and mineral resources research institutes. The Act stipulates that funding is to be provided without regard to, or on the basis of, race, sex or religion.

Trans-Alaska Pipeline Authorization Act of 1973, 43 U.S.C. sec. 1651 (note)

120. This Act provided funds for the construction of the Trans-Alaska Pipeline. It requires the implementation of affirmative action policies to prevent discrimination on the basis of race, colour, national origin, sex, and religion in the issuance of certificates, permits, rights-of-way, leases or other authorizations under the Act.

Federal Land Policy and Management Act of 1976, 43 U.S.C. sec. 1747 (10)

121. This Act provides loans to states to relieve social/economic impacts from certain mining. It prohibits discrimination on the basis of race, colour, national origin, sex, and religion.

Outer Continental Shelf Lands Act Amendments, 43 U.S.C. sec. 1863

122. This Act provides funds under the Outer Continental Shelf Lands Act and prohibits discrimination on the bases of race, colour, national origin, sex, and religion.

48 U.S.C. sec. 1708

123. This section addresses conveyances of certain submerged land of U.S. territories and prohibits discrimination on the basis of race, colour, national origin, sex, religion and ancestry in making such conveyances.

Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. sec. 3789 (d)

124. This Act provides funding for state and local justice system improvements. It prohibits discrimination on the basis of race, colour, national origin, sex, and religion.

Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. sec. 5672

125. This Act, enacted to provide federal assistance to juvenile justice programmes nationwide, incorporates the non-discrimination provisions of 42 U.S.C. sec. 3789 (d), which prohibit discrimination on the basis of race, colour, national origin, sex, and religion.

Justice Assistance Act of 1984, 42 U.S.C. sec. 10504

126. This Act provides assistance for emergency law enforcement and incorporates non-discrimination provisions at 42 U.S.C. sec. 3789 (d), which prohibit discrimination on the basis of race, colour, national origin, sex, and religion.

Victims of Crime Act of 1984, 42 U.S.C. sec. 10604

127. This Act provides assistance for emergency law enforcement and incorporates non-discrimination provisions at 42 U.S.C. sec. 3789 (d) which prohibit discrimination on the basis of race, colour, national origin, sex, and religion.

Workforce Investment Act of 1998, 29 U.S.C. sec. 2938

128. This Act provides funding for employment, training, literacy, and vocational rehabilitation programmes. It prohibits discrimination on the basis of race, colour, national origin, sex, religion, age, disability, and political affiliation or belief.

Foreign Assistance Act of 1961, 22 U.S.C. sec. 2314 (g)

129. This Act provides for foreign assistance. It prohibits discrimination on the basis of race, national origin, sex, or religion against U.S. persons participating in the furnishing of this assistance.

Federal-Aid Highway Act of 1968, 23 U.S.C. sec. 140

130. This Act provides employment assurances for the receipt of funds for the federal-aid highway systems. It prohibits discrimination on the basis of race, colour, national origin, sex, or religion.

Federal Transit Act, 49 U.S.C. sec. 5332

131. This Act provides funds for mass transportation programmes and prohibits discrimination on the basis of race, colour, national origin, sex, religion, or age.

Airport and Airway Improvement Act, 49 U.S.C. sec. 47123

132. This Act provides funds for airport and airway improvements and prohibits discrimination on the basis of race, colour, national origin, sex, or religion.

Domestic Volunteer Service/Volunteers in Service to America Act of 1973, 42 U.S.C. sec. 5057

133. This Act provides funds to foster and expand voluntary citizen service in communities throughout the nation in activities to help the disadvantaged. It prohibits discrimination on the basis of race, colour, national origin, sex, religion, age, political affiliation, or disability.

National and Community Service Act of 1990, 42 U.S.C. sec. 12635

134. This Act provides federal assistance for national service as job or education training and prohibits discrimination on the basis of race, colour, national origin, sex, religion, age, disability, or political affiliation.

General Education Provisions Act, 20 U.S.C. sec. 1228 (a)

135. This statute directs the Secretary of Education to require an applicant for assistance under an applicable programme administered by the Department to describe in the application the steps the applicant proposes to take to ensure equitable access to, and equitable participation in, the project or activity to be conducted with such assistance by addressing the special needs of students, teachers, and other programme beneficiaries in order to overcome barriers to equitable participation, including barriers based on gender, race, colour, national origin, disability and age.

3. Federal executive action

136. The President has executive authority to direct the activities of federal agencies in furtherance of the Constitution and laws of the United States. In exercise of this authority, the President has issued executive orders that prohibit discrimination in federal programmes and that encourage diversity in the federal workplace to the extent that such actions are consistent with federal law. For example:

(a) Executive Order 11246, signed on 24 September 1965, prohibits federal contractors and subcontractors from discriminating in employment, and requires that they undertake affirmative action to ensure equal employment opportunity without regard to race, colour, sex, religion or national origin. Generally, all contractors and subcontractors holding non-exempt federal and federally assisted contracts and subcontracts worth more than $10,000 must comply with this Order;

(b) To ensure that federal funding agencies effectively and consistently enforce their responsibilities for ensuring their recipients do not discriminate, in 1980 President Carter issued Executive Order 12250. Among other things, this Order delegates to the Attorney-General the President's authority to approve regulations under Title VI of the 1964 Civil Rights Act (prohibiting discrimination on the basis of race, colour, and national origin by recipients of

federal financial assistance). In addition, the Executive Order charges the Attorney-General with leadership to provide for the consistent and effective implementation of various laws prohibiting discriminatory practices in federal programmes and programmes receiving federal financial assistance;

(c) On 17 January 1994, in Executive Order 12892, President Clinton introduced new fair housing initiatives in federal programmes to ensure that all federal policies and programmes across all agencies support the fair housing and equal opportunity goals of the Fair Housing Act. The purpose of this Order was to remove all barriers to housing for lower income and minority Americans. The Secretary of Housing and Urban Development and the Attorney-General, the officials with primary responsibility for the enforcement of federal fair housing laws, were assigned the task of developing and coordinating measures to carry out the purposes of the Order. In addition, the Order established an advisory council entitled the "President's Fair Housing and Urban Development Council" chaired by the Secretary of Housing and Urban Development to review the design and delivery of federal programmes and activities and ensure that they support a coordinated strategy to affirmatively further fair housing;

(d) On 11 February 1994, in Executive Order 12898, President Clinton directed every federal agency to identify and consider adverse human health or environmental effects of its programmes, policies, and activities on minority and low-income populations. The Order also established a working group on environmental justice comprising the heads of the major executive agencies. The working group's task was to coordinate, provide guidance and serve as a clearinghouse for the federal agencies on their environmental justice strategies;

(e) On 24 May 1996, Executive Order 13007 was issued, calling upon federal agencies to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites;

(d) Executive Order 13021, issued on 21 October 1996, calls upon the Federal Government to ensure that tribal colleges and universities are more fully recognized as accredited institutions, have access to the opportunities afforded other institutions and have federal resources committed to them on a continuing basis. The Order also, among other objectives, calls on the Federal Government to promote access to high quality education opportunity for economically disadvantaged students and the preservation and revitalization of American Indian and Alaska Native languages and cultural traditions;

(e) On 6 August 1998, President Clinton issued Executive Order 13096 on American Indian and Alaska Native Education affirming the political and legal relationship of the Federal Government with tribal governments and recognizing the educational and culturally related academic needs of American Indians and Alaska Native students. This Order established six goals, consistent with tribal traditions and cultures, for improving educational achievement and academic progress for American Indians and Alaska Natives. In order to achieve these goals, the Order also established, among other initiatives, an inter-agency task force, which was tasked with developing a comprehensive inter-agency plan, research agenda and policy for improving American Indian and Alaska Native educational achievement and an inter-agency resource guide on federal education-related programmes;

(f) Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, was issued on 14 May 1998, requiring federal agencies to consult with tribes when developing regulatory practices, policies, or regulations that significantly affect tribal interests. Among other things, consultation with tribes helps to ensure that federal policymakers account for the often unique interests and perspectives of tribes and their members. By doing so, it will help avoid developing policies that might discriminate against Native American interests. In addition, by affirming the Federal Government's commitment to Indian tribal rights, including treaty hunting and fishing rights, the Executive Order serves an educational function that may, in turn, lessen racial tensions that sometimes confront tribal members as they seek to exercise those rights;

(g) Executive Order 13125 was signed by President Clinton on 7 June 1999 to improve the quality of life of Asian Americans and Pacific Islanders (AAPIs) through increased participation in federal programmes where they are under-served. The Executive Order establishes the President's Advisory Commission on AAPIs and the White House Initiative on AAPIs. It mandates the development of an integrated federal plan to respond to the needs of this population;

(h) On 9 June 1999, President Clinton issued an Executive Memorandum requiring that the Departments of Justice, Treasury and Interior Design and implement systems for collecting data by race, ethnicity, and gender relating to certain actions taken by law enforcement agents employed by these Departments. The purpose of this data collection effort is to allow the Federal government to determine whether any of its law enforcement agencies is engaged in so-called "racial profiling."

137. Federal agencies also have authority to adopt regulations to implement the programmes they are charged with administering. In many cases, these regulations include provisions prohibiting discrimination by government agents and individuals and entities who receive services from the agency. For example, all federal assistance agencies have regulations prohibiting race discrimination by recipients of their assistance. A comprehensive listing of these regulations can be found on the Web site of the Coordination and Review Section of the Civil Rights Division found at <http://www.usdoj.gov/crt/cor>.

4. State anti-discrimination measures

138. Most states, and many large cities, have adopted their own statutory and administrative schemes for protecting individuals from discrimination in fields actively regulated by state and local governments. For example, state constitutions and statutes typically protect individuals from discrimination in housing, employment, public accommodations, government contracting, credit transactions and education. As a result, a particular discriminatory act might well violate federal, state and local law - each having its own sanctions. States may also provide protections which differ from or exceed the minimum requirements of federal law. Where such protections exist, state or municipal law also provides judicial or administrative remedies for victims of discrimination.

139. This re-enactment of similar or expanded protections at the state and local level serves several important purposes. First, this process involves a broad range of legislators at all levels of government taking positive steps toward the elimination of racial discrimination. This is important both for the specific legislative action that results, and for the increased local participation in the effort to eradicate race-based inequalities and racial intolerance. Thus, the effort to eliminate racial discrimination occurs at the most basic political level. Second, the process usually involves the creation of a state or local agency for the administrative enforcement of the protections involved. This frequently involves the appointment of a local commission with the power to investigate complaints and to enforce the legislation in question. Accordingly, enforcement offices are made available at locations closer to, and more accessible by, the affected individuals. Since local officials may more fully understand underlying issues and complexities in individual cases, adjudication of cases by them may yield better public understanding.

140. For example, the Florida Commission on Human Relations was established in 1969, with the enactment of the Florida Human Rights Act, for the purpose of enforcing Florida's anti-discrimination laws. The Commission is both a policy-making and community organization and an enforcer of anti-discrimination laws. The Commission is authorized to investigate and seek the resolution of discrimination complaints - in housing, employment, public accommodations and private club membership - through administrative and legal proceedings.

141. In Alaska, the State Commission for Human Rights is responsible for enforcing the Alaska human rights law, which makes it unlawful to discriminate in employment, housing, public accommodations, finance and credit, and state political practices in all cases on the basis of race, national origin, religion, sex, colour, and physical or mental disability, and in some cases, on the basis of age, pregnancy, marital status, parenthood, and changes in marital status.

142. Moreover, many municipalities have established agencies to monitor and enforce anti-discrimination legislation. In San Francisco, the Employment, Housing and Public Accommodations Division of that city's Human Rights Commission implements the San Francisco Charter and Administrative Code, which prohibits discrimination in employment, housing, and public accommodations. Division staff investigate and mediate complaints involving allegations of discrimination and non-compliance, as well as prepare and promote community programmes aimed at reducing or eliminating inequalities and educate the community regarding the principles of equal opportunity.

143. With regard to equal employment, there are 121 designated Fair Employment Practice agencies created by state and local jurisdictions which investigate charges of race discrimination under work-sharing agreements with the EEOC pursuant to Section 706 of the Civil Rights Act of 1964. These are identified at 29 Code of Federal Regulations Part 1601.74. There are also a number of Tribal Employment Rights organizations which investigate charges of discrimination on or near Indian reservations pursuant to work-sharing agreements with the EEOC. Examples of state laws prohibiting race discrimination in employment are: the California Fair Employment and Housing Act, Cal. Gov. Code sect. 12940; the New York Human Rights Law, N.Y. Exec. Law sect. 296; and the Texas Commission on Human Rights Act, Tex. CA Labor sect. 21.051.

144. In subsequent reports to the Committee, the United States intends to discuss in greater detail state and local measures taken to prevent racism and racial discrimination. As with protections at the federal level, these measures are complex and comprehensive, therefore requiring a more detailed discussion than was possible here.

B. U.S. reservations, understandings and declarations

145. To ensure that U.S. law and policy were consonant with the obligations that it would assume under the Convention, the United States entered certain reservations, understandings and declarations to the Convention at the time of ratification. These related, inter alia, to: (a) the Convention's prohibitions concerning advocacy and incitement, which to a certain extent are more restrictive than U.S. constitutional guarantees of free expression and association; (b) the Convention's requirements to restrict the activities of private persons and non-governmental entities, which in some instances lie beyond the reach of existing U.S. law; and (c) the express extension of the Convention's restrictions to all levels of political organization, which implicates the delicate relationship between the state and federal governments in the U.S. political system. While these differences were primarily ones of approach rather than substance, each nonetheless required clarification in the context of U.S. ratification of the Convention.

146. In making these clarifications, the United States took particular note of article 20, which precludes reservations which are "incompatible with the object and purpose of the Convention" or "the effect of which would inhibit the operation of any of the bodies established by the Convention". The United States believes its reservations, understandings and declarations, which are an essential element of its consent to be bound by this instrument, are compatible with its object and purpose; they also do not inhibit the operation of any bodies established by the Convention. The United States fully supports the goals of the Convention. In any event, paragraph 2 of article 20 provides an authoritative method of determining whether any reservation is incompatible or inhibitive in relation to this Convention; namely, formal objection thereto by at least two thirds of the States parties to the Convention . None of the conditions imposed upon U.S. ratification of this Convention has been objected to in that manner.

1. Freedom of speech, expression and association

147. Article 4 of the Convention expressly requires States parties to condemn all propaganda and all organizations based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form. States parties are further required to take immediate and positive measures to "eradicate all incitement to, or acts of, such discrimination," inter alia by (a) punishing the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, and acts of violence or incitement to acts of violence, as well as the provision of assistance to racist activities, including financing; (b) prohibiting organizations and activities which promote and incite racial discrimination, including participation in such organizations and activities; and (c) preventing public authorities or institutions, whether national or local, from promoting or inciting racial discrimination.

148. Article 7 imposes an undertaking on States parties to take measures to combat prejudice and promote tolerance in the fields of teaching, education, culture and information. These provisions reflect a widely held view that penalizing and prohibiting the dissemination of ideas based on racial superiority are central elements in the international struggle against racial discrimination. The Committee itself has given a broad interpretation to article 4, in particular emphasizing in General Recommendations I (1972) and VII (1985) that the mandatory requirements of article 4 (a) and (b), are compatible with the rights of freedom of opinion and expression. Many other States parties to the Convention have enacted and enforced measures to give effect to these requirements.

149. As a matter of national policy, the U.S. Government has long condemned racial discrimination, and it engages in many activities both to combat prejudices leading to racial discrimination and to promote tolerance, understanding and friendship among national, racial and ethnic groups. Such programmes include those under the authority of Title VI of the Civil Rights Act, the Fair Housing Act, the Bilingual Education Act, the Mutual Educational and Cultural Exchange Act of 1961, the International Education Act (Title VI of the Higher Education Act of 1965), and the National Foundation on the Arts and the Humanities Act of 1965. Also, under U.S. law, federal tax money cannot be used to support private entities (such as schools) that practice racial or ethnic discrimination. Further, the Hate Crimes Statistics Act of 1990 mandates collection by the Justice Department of data on crimes motivated by, inter alia, race.

150. However, American citizens applaud the fact that the First Amendment to the U.S. Constitution sharply curtails the Government's ability to restrict or prohibit the expression or advocacy of certain ideas, however objectionable. Under the First Amendment, opinions and speech are protected without regard to content. This is a cornerstone of American society that has as much resonance with regard to modern forms of communication like the Internet as with more traditional modes of communication. Certain types of speech, intended and likely to cause imminent violence, may constitutionally be restricted, so long as the restriction is not undertaken with regard to the speech's content. For example, several federal statutes punish "hate crimes", i.e., acts of violence or intimidation motivated by racial, ethnic or religious hatred and intended to interfere with the participation of individuals in certain activities such as employment, housing, public accommodation, use of public facilities, and the free exercise of religion. See, e.g., 18 U.S.C. sec. 241, 245, 247; 42 U.S.C. sec. 3631. An increasing number of state statutes are similarly addressed to hate crimes, and while they too are constrained by constitutional protections, the U.S. Supreme Court has recently determined that bias-inspired criminal conduct may be singled out for especially severe punishment under state law. In two recent cases, the U.S. Supreme Court has addressed First Amendment issues in the context of hate crimes legislation. In R.A.V. v. City of St. Paul, 505 U.S. 377 (1992), the municipal ordinance in question made it a misdemeanour to "place on public or private property a symbol, object, appellation, characterization, or graffiti, including, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, colour, creed, religion or gender." The Court held that the statute unconstitutionally restricted freedom of speech on the basis of its content. Notably, the Court did not find it unconstitutional to criminalize "hate speech" per se. Instead, a majority of the Court held that a jurisdiction may not select only some kinds of hate speech to criminalize while leaving other kinds unrestricted.

151. Then, in Wisconsin v. Mitchell, 508 U.S. 476 (1993), the Court addressed the issue of enhanced penalties for crimes motivated by prejudice. Under the relevant state law, an individual who was convicted of aggravated assault (an offence which normally carried a penalty of two years' imprisonment) was sentenced to an additional four years' imprisonment because his crime had been racially motivated.

152. The Wisconsin Supreme Court had found the statute to be in violation of the First Amendment, as interpreted by the U.S. Supreme Court in R.A.V. v. City of St. Paul, because it singled out the defendant's biased thoughts and penalized him based on the content of those thoughts. On appeal, the U.S. Supreme Court reversed the judgement and upheld the statute as constitutional. In a unanimous opinion, the Court held that while the St. Paul ordinance had (impermissibly) targeted expression, the Wisconsin enhanced-penalty statute was aimed at unprotected (indeed, criminal) conduct.

153. In subsequent decisions, federal and state courts have followed this distinction, generally upholding statutes which punish specific behaviour motivated by bias. For example, a federal appellate court sustained the criminal prosecution under federal civil rights laws of a defendant who had burned a cross on a Black family's lawn, distinguishing that act done with intent to intimidate from similar acts meant to make a political statement (United States v. Stewart, 65 F.3d 918 (11th Cir. 1995), cert. denied sub nom. Daniel v. United States, 516 U.S. 1134). In T.B.D. v. Florida, 656 So.2d 479 (Fla. 1995), cert. denied, 516 U.S. 1145 (1996), Florida's highest court upheld a statute making it a misdemeanour to place "a burning or flaming cross, real or simulated" on the property of another without permission.

154. During the drafting of article 4, the U.S. delegation expressly noted that it posed First Amendment difficulties, and upon signing the Convention in 1966, the United States made a declaration to the effect that it would not accept any requirement thereunder to adopt legislation or take other actions incompatible with the U.S. Constitution. A number of other States parties have conditioned their acceptance of article 4 by reference to the need to protect the freedoms of opinion, expression, association and assembly recognized in the Universal Declaration of Human Rights.

155. In becoming a party to the International Covenant on Civil and Political Rights in 1992, the United States faced a similar problem with respect to article 20 of that treaty. In part because the Human Rights Committee had adopted a similarly broad interpretation of that article in its General Comment 11 (1983), the United States entered a reservation intended to make clear that the United States cannot and will not accept obligations which are inconsistent with its own constitutional protections for free speech, expression and association. A similar reservation was therefore adopted with respect to the current Convention. It reads:

> "[T]he Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under Articles 4 and 7, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States."

2. Private conduct

156. Given the breadth of the definition of "racial discrimination" under article 1 (1), the obligation imposed on States parties in article 2 (1) (d) to bring to an end all racial discrimination "by any persons, group or organization", and the specific requirements of paragraphs 2 (1) (c) and (d) as well as articles 3 and 5, the Convention may be viewed as imposing a requirement on a State party to take action to prohibit and punish purely private conduct of a nature generally held to lie beyond the proper scope of governmental regulation under current U.S. law.

(a) Fourteenth Amendment

157. Since the time of the Civil Rights Cases, 109 U.S. 3 (1883), the U.S. Supreme Court has consistently held that the Fourteenth Amendment does not reach purely private conduct. Thus, the Fourteenth Amendment can only be invoked to protect against conduct that is the result of "state action". The state action requirement of the Equal Protection Clause reflects a traditional recognition of the need to preserve personal freedom by circumscribing the reach of governmental intervention and regulation, even in situations where that personal freedom is exercised in a discriminatory manner.

158. In determining whether "state action" is present in a given case, the critical inquiry under U.S. domestic law is whether the conduct of a private party is "fairly attributable" to the state. (Lugar v. Edmonson, 457 U.S. 922, 937 (1982)). Under that test, mere governmental involvement with private parties is often insufficient to trigger a finding of state action. For example, in and of itself, government licensing and regulation of private entities is not state action. (Moose Lodge No. 107 v. Irvins, 407 U.S. 163 (1972) (licensing); Jackson v. Metropolitan Edison, 419 U.S. 345 (1974) (regulation)). The same is true for government contracting. (Blum v. Yaretsky, 457 U.S. 991 (1982)). However, state employees acting under colour of law are generally considered "state actors" (West v. Atkins, 487 U.S. 42 (1988)). In addition, the Supreme Court has held that the following constitute state action: the private performance of "public functions", Marsh v. Alabama, 326 U.S. 501 (1946); judicial enforcement of private discriminatory arrangements such as restrictive covenants on property, Shelley v. Kraemer, 334 U.S. 1 (1948); certain forms of governmental assistance or subsidies to private parties, Norwood v. Harrison, 413 U.S. 455 (1973); and state encouragement of discrimination by private parties, Reitman v. Mulkey, 387 U.S. 369 (1967).

(b) Thirteenth Amendment

159. On the other hand, the Thirteenth Amendment's prohibition against slavery and involuntary servitude encompasses both governmental and private action (Civil Rights Cases, 109 U.S. 3, 20 (1883)). The U.S. Supreme Court has held that Congress may regulate private conduct under sec. 2 of the Thirteenth Amendment, which provides that "Congress shall have the power to enforce this article by appropriate legislation" (Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968)). Such power includes determining what constitutes the "badges and incidents of slavery and the authority to translate that determination into effective legislation". See also United States v. Kozminski, 487 U.S. 931, 942 (1988) (discussing Thirteenth Amendment right to be free from involuntary servitude).

160. Although Jones could be read as authorizing Congress to regulate a broad array of harms on the ground that they were a form of servitude and slavery, the Court has not had the opportunity to define the outer limits of Jones. The Court has intimated, however, that "some private discrimination ... in certain circumstances" is subject to legislation under Section 2 of the Thirteenth Amendment. See Norwood v. Harrison, 413 U.S. 455, 470 (1973). For instance, the Reconstruction Era civil rights statutes discussed above (42 U.S.C. sec. 1981, 1982 and 1983, which create a cause of action against any person who, acting under colour of state law, abridges rights created by the Constitution), have been used to prohibit private actors from engaging in racial discrimination in a variety of activities, including the sale or rental of private property, see Jones, 392 U.S. at 413; the assignment of a lease, see Sullivan v. Little Hunting Park, Inc., 396 U.S. 229 (1969); and the grant of membership in a community swimming pool, see Tillman v. Wheaton-Haven Recreation Ass'n. Inc., 410 U.S. 431 (1973); the making and enforcement of private contracts, see Patterson v. McLean Credit Union, 491 U.S. 164, 272 (1989); see also Runyon v. McCrary, 427 U.S. 160 (1976) (reaching refusal of private school to admit Black students). Finally, section 1985 (3) has been applied to some private conspiracies. Compare Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993) (demonstration against abortions clinics was not within the scope of statute) with Griffin v. Breckenridge, 403 U.S. 88 (1971) (conspiracy to deprive Blacks of right of interstate travel was within the reach of statute).

(c) Commerce and spending powers

161. In addition to the Thirteenth Amendment, Congress may regulate private conduct through the commerce and spending powers it possesses under article I of the Constitution. For example, it was under the Commerce Clause that Congress passed Title II and Title VII of the 1964 Civil Rights Act, which prohibit private entities from discriminating in public accommodations and employment. See Katzenbach v. McClung, 379 U.S. 294 (1964). The Fair Housing Act is similarly grounded in the Commerce Clause. Further, it was under Congress' spending power as well as under its authority under Section 5 of the Fourteenth Amendment, that Congress passed Title VI of the 1964 Civil Rights Act, which prohibits discrimination by public and private institutions that receive federal funds (Lau v. Nichols, 414 U.S. 563 (1974)).

162. Arguably, the reference to "public life" in the definition of "racial discrimination" in article 1 (1) of the present Convention might be read to limit the reach of its prohibitions to actions and conduct involving some measure of governmental involvement or "state action". The negotiating history of the Convention is far from clear on this point, however, and it is not possible to say with certainty that the term "public life" as contemplated by the drafters is synonymous with the permissible sphere of governmental regulation under U.S. law. Moreover, the Committee appears to have taken an expansive view in this regard, finding in the Convention a prohibition against racial discrimination perpetuated by any person or group against another. Accordingly, some forms of private individual or organizational conduct that are not now subject to governmental regulation under U.S. law could well be found within the sphere of "public life" as that term is interpreted under the Convention.

163. Accordingly, it was appropriate to indicate clearly, through a formal reservation, that U.S. undertakings in this regard are limited by the reach of constitutional and statutory protections under U.S. law as they may exist at any given time:

> "[T]he Constitution and laws of the United States establish extensive protections against discrimination, reaching significant areas of non-governmental activity. Individual privacy and freedom from governmental interference in private conduct, however, are also recognized as among the fundamental values which shape our free and democratic society. The United States understands that the identification of the rights protected under the Convention by reference in article 1 to fields of "public life" reflects a similar distinction between spheres of public conduct that are customarily the subject of governmental regulation, and spheres of private conduct that are not. To the extent, however, that the Convention calls for a broader regulation of private conduct, the United States does not accept any obligation under this Convention to enact legislation or take other measures under paragraph (1) of article 2, subparagraphs (1) (c) and (d) of article 2, article 3 and article 5 with respect to private conduct except as mandated by the Constitution and laws of the United States."

3. Dispute settlement

164. In accordance with its long-standing policy, the United States also conditioned its adherence to the Convention upon a reservation requiring its consent to the exercise of the jurisdiction of the International Court of Justice over any dispute that might arise between it and another State party. The text of this reservation is identical to those recently taken upon ratification of other treaties, including the ICCPR:

> "[W]ith reference to article 22 of the Convention, before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case."

4. Federalism

165. Given its constitutional roots and its embodiment in the extensive statutory provisions enacted by Congress over the decades, federal anti-discrimination law is pervasive and reaches federal, state and local levels of government. Where constitutionally permissible, it provides the basis for broad regulation of racially discriminatory conduct at the private level. Nonetheless, because the Congress is a legislature of limited jurisdiction, it must find authority for its statutes somewhere in the U.S. Constitution, e.g., through Section 5 of the Fourteenth Amendment, the Commerce Clause or the Spending Clauses. In those limited circumstances where the Constitution does not permit the application of federal anti-discrimination laws, state and local governments have some authority to act. Under the Tenth Amendment to the Constitution, "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people". Thus, the state and local governments retain a fairly substantial range of actions within which to regulate or prohibit discriminatory actions. In some instances, state and local governments have exercised their

inherent authority by adopting statutes and administrative regulations providing powerful and effective protections against, and remedies for, private discrimination based on race, colour, ethnicity and national origin. Indeed, in some states, courts have interpreted their state constitutions to provide even broader protections against discrimination than under federal law.

166. Because the fundamental requirements of the Convention are respected and complied with at all levels of government, the United States concluded there was no need to pre-empt these state and local initiatives or to federalize the entire range of anti-discriminatory actions through the exercise of the constitutional treaty power. Indeed, there is no need for implementing legislation providing the Federal Government with a cause of action against the constituent states to ensure that states fulfil the obligations of the Convention. Subject to the constraints imposed by our federal system, the Federal Government already has the authority under the Constitution and the federal civil rights laws to take action against states to enforce the matters covered by the Convention.

167. It is important to stress that this understanding is not a reservation. It does not condition or limit the international obligations of the United States. Nor can it serve as an excuse for any failure to comply with those obligations as a matter of domestic or international law. Instead, it addresses a specific and sensitive aspect of the fundamental governmental structure of the United States. As an aspect of the modality of implementation in domestic law, this understanding is entirely within the discretion of the United States as a State party and contravenes no provision of the Convention.

168. In ratifying the International Covenant on Civil and Political Rights in 1992, the United States addressed this issue through adoption of an interpretative understanding, the effect of which was to clarify that the United States will carry out its obligations in a manner consistent with the federal nature of its form of government. A similar understanding was adopted for the Torture Convention as well as for the current Convention:

> "[T]he United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the state and local governments. To the extent that state and local governments exercise jurisdiction over such matters, the Federal government shall, as necessary, take appropriate measures to ensure the fulfilment of this Convention."

5. Non-self-executing treaty

169. In ratifying the Convention, the United States made the following declaration:

> "[T]he United States declares that the provisions of the Convention are not self-executing."

170. This declaration has no effect on the international obligations of the United States or on its relations with States parties. However, it does have the effect of precluding the assertion of rights by private parties based on the Convention in litigation in U.S. courts. In considering ratification of previous human rights treaties, in particular the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1994) and the International

Covenant on Civil and Political Rights (1992), both the Executive Branch and the Senate have considered it prudent to declare that those treaties do not create new or independently enforceable private rights in U.S. courts. However, this declaration does not affect the authority of the Federal Government to enforce the obligations that the United States has assumed under the Convention through administrative or judicial action.

171. As was the case with prior human rights treaties, existing U.S. law provides protections and remedies sufficient to satisfy the requirements of the present Convention. Moreover, federal, state and local laws already provide a comprehensive basis for challenging discriminatory statutes, regulations and other governmental actions in court, as well as certain forms of discriminatory conduct by private actors. Given the adequacy of the provisions already present in U.S. law, there was no discernible need for the establishment of additional causes of action or new avenues of litigation in order to guarantee compliance with the essential obligations assumed by the United States under the Convention.

172. This declaration has frequently been misconstrued and misinterpreted. Declaring the Convention to be non-self-executing in no way lessens the obligation of the United States to comply with its provisions as a matter of international law. Neither does it contravene any provision of the treaty or restrict the enjoyment of any right guaranteed by U.S. obligations under the Convention. There is, of course, no requirement in the Convention that States parties make it "self-executing" in their domestic law, or that private parties be afforded a specific cause of action in domestic courts on the basis of the Convention itself. The drafters quite properly left the question of implementation to the domestic laws of each State party.

173. The United States is aware of the Committee's preference for the direct inclusion of the Convention into the domestic law of States parties. Some non-governmental advocacy groups in the United States would also prefer that human rights treaties be made "self-executing" in order to serve as vehicles for litigation. The declaration reflects a different choice, one in favour of retaining existing remedies for private parties.

C. Specific articles

174. Against this background, the specific provisions of U.S. law that give effect to the requirements of the Convention are indicated below.

Article 1

175. A preliminary word is necessary about the Convention's definition of "racial discrimination". Although the definition included in article 1 (1) contains two specific terms ("descent" and "ethnic origin") not typically used in federal civil rights legislation and practice, there is no indication in the negotiating history of the Convention or in the Committee's subsequent interpretation that those terms encompass characteristics which are not already subsumed in the terms "race", "colour" and "national origin" as these terms are used in existing U.S. law. See, e.g., Saint Frances College v. Al-Khazraji, 481 U.S. 604 (1987); Shaare Tefila Congregation v. Cobb, 481 U.S. 615 (1987); Roach v. Dresser Industrial Valve, 494 F. Supp. 215 (W.D. La. 1980). The United States thus interprets its undertakings, and intends to carry out its obligations, under the Convention on that basis.

Article 2

176. Under article 2 (1), States parties to the Convention condemn and undertake to eliminate racial discrimination in all its forms and by all appropriate means. To this end, this article specifies a number of specific undertakings.

177. As required by article 2 (1) (a), racial discrimination by the Government is prohibited throughout the United States. The Fifth and Fourteenth Amendments guarantee that no public authority may engage in an act or practice of racial discrimination against persons, groups of persons or institutions. These prohibitions apply with equal force at the federal, state and local levels, and all public authorities and institutions must comply. As indicated above, U.S. law extends this prohibition to private organizations, institutions and employers under many circumstances.

178. Under article 2 (1) (b), States parties undertake not to sponsor, defend or support racial discrimination by any person. Such conduct is strictly prohibited in the United States. The U.S. Constitution prohibits discrimination on the basis of race or other personal characteristics at every level of government (federal, state, and local). Several federal statutes, including Title VI of the Civil Rights Act of 1964, prohibit discrimination by state or local governments, or private entities, that receive federal financial assistance. Not only does the U.S. Government not sponsor, defend, or support discrimination, but the Federal Government is actively engaged in the enforcement of anti-discrimination statutes against public and private entities in the areas of discrimination in employment, voting, housing and education.

179. Article 2 (1) (c) requires States parties to "take effective measures to review governmental, national and local policies. . .which have the effect of creating or perpetuating racial discrimination". Article 2 (1) (c) also requires States parties to "amend, rescind or nullify any laws and regulations" that have such effects.

180. The United States satisfies the policy review obligation of article 2 (1) (c) through this nation's legislative and administrative process, as well as through court challenges brought by governmental and private litigants. U.S. law is under continuous legislative and administrative revision and judicial review.

Executive and administrative review

181. White House. As previously discussed, on 13 June 1997, President Clinton launched the President's Initiative on Race through which he asked all Americans to join him in a national effort to deal openly and honestly with racial differences. This year-long effort combined thoughtful study of government policies, constructive dialogue, and positive action to address the continuing challenge of how residents of the United States will live and work more productively as "One America" in the twenty-first century.

182. The President convened an Advisory Board of seven distinguished Americans to assist him with the Initiative. The Advisory Board worked with the President to engage the many diverse groups, communities, regions, and various industries in this country. The President

asked the Advisory Board to join him in reaching out to local communities and listen to Americans from all different races and backgrounds, to achieve a better understanding of the state of race relations in the United States. The Advisory Board also studied critical substantive areas in which racial disparities are significant, including education, economic opportunity, housing, health care and the administration of justice. Once the year-long effort was completed, the Advisory Board submitted a report to President Clinton concerning its findings and recommendations for creative ways to resolve racial disparities.

183. Based on the foundation laid by the Initiative on Race and the Advisory Board's report, President Clinton created the White House Office on the President's Initiative for One America in February 1999. The Initiative for One America is the first free-standing office in the White House dedicated to the ongoing mission of ethnic, racial and religious reconciliation. The Office's director is an Assistant to the President, the highest staff-level position in the White House. The Initiative for One America promotes the President's goals of educating the American public about race, encouraging racial reconciliation through opening a national dialogue on race, identifying and advancing policies that can expand opportunities for racial and ethnic minorities, and coordinating the work of the White House and federal agencies to carry out the President's vision of One America.

184. Department of Housing and Urban Development. The Department's Office of Fair Housing and Equal Opportunity is responsible for enforcing the Fair Housing Act, which prohibits discrimination on the basis of race, colour, religion, national origin, sex, handicap and familial status. With a view toward increasing the effectiveness of its enforcement activities, the Department is presently conducting a national housing discrimination study. Building upon previous studies conducted in 1977 and 1989, this is the most sophisticated and comprehensive study of its kind. This new study is a three-year project designed to examine housing practices in 20 urban and rural localities per year (up to 60 localities in total). Through the use of paired testers (people of different racial or ethnic backgrounds, matched for every other characteristic, such as income) HUD will examine and evaluate patterns and trends in housing sales and rentals, and in mortgage lending. Congress appropriated $7.5 million for the study in 1999 and $6.0 million in 2000. The results of this study will enable the Department more effectively to focus its enforcement efforts, building upon an existing aggressive enforcement programme.

185. Department of Energy. In an effort to ensure equal and fair treatment for all of its employees, the Department of Energy (DOE) has recently undergone a significant restructuring of its Office of Civil Rights and a substantial re-evaluation of security and practice policies which have been criticized as discriminatory against Asian-Americans.

186. First, in response to numerous long-standing complaints that the Energy Department's Office of Civil Rights was unresponsive and hopelessly backlogged, and that it failed to address adequately the needs of its employees, the Department embarked upon a wide-reaching reform project under the endorsement of President Clinton's Management Council.

187. Midway through the reform process, the Office of Civil Rights is rapidly becoming a case study in recovery. The backlog of cases has been reduced by one third, alternative dispute resolution has been introduced to good result, and the morale of the office has been lifted substantially.

188. Second, in the summer of 1999, the Secretary of Energy established the DOE Task Force Against Racial Profiling. This 19-member body, which includes senior federal and contractor officials, and a Civil Rights Commissioner, was chartered to (a) provide the Secretary with accurate observations and assessments of workplaces within the Department nationwide; and (b) provide the Secretary with recommendations to ensure that policies against racial profiling within the DOE are strengthened and carried out effectively.

189. Including preliminary fact-finding delegations to the three nuclear labs, the Task Force conducted nine site visits to a variety of DOE facilities from June through November. In addition, four on-site consultations were made to corporations in the private sector that have been rated best by their employees for diversity management and workplace excellence.

190. Department of Defense. Although the military is one of the most racially and ethnically integrated institutions in the United States, inequities nevertheless persist. For this reason, policies and practices are under continual review and revision to ensure conformance with the institution's long-standing commitment to equal opportunity and non-discrimination.

191. Over the years, Department of Defense leadership has remained vigilant in order to sustain and improve the environment in which U.S. military members live and work. Unlike non-military equal opportunity programmes that are based in law, Department of Defense military equal opportunity programmes are based in Secretary of Defense policy. These programmes are monitored internally through a process of Service reports and a system of compliance investigations. Accountability is stressed throughout the highest and lowest levels of the chain of command. Commanders at the unit level use assessment surveys to measure the effectiveness of equal opportunity guidance, practices and programmes.

192. On 22 November 1999, the Secretary of Defense released two reports assessing equal opportunity progress from a Department of Defense perspective: a report on the Career Progression of Minority and Women Officers and a report on the Armed Forces Equal Opportunity Survey. Both reports are available on the World Wide Web at <http://www.defenselink.mil/pubs/>.

193. The report on the Career Progression of Minority and Women Officers study affirms equal opportunity successes while identifying areas that require continuing attention and effort.

The study addressed in part the perceptions of service members, but its main thrust was to examine performance in providing equal opportunity in the military Services. The study determined that:

- From 1977 to 1997, representation of racial minorities and women among active duty commissioned officers more than doubled, from 7 per cent to 15.3 per cent for minority officers and from 5.9 per cent to 14.1 per cent for women officers. These patterns of increasing minority and female representation were true for all four Services.

- Even during the post-cold war force reduction, representation of women officers increased, as did the representation of Blacks, Hispanics, and other minorities.

- Women and minorities tend to be concentrated in administrative and supply areas and under-represented in tactical operations, the area that yields two thirds of the general and flag officers of the Services. Women and minorities are very much under-represented in some fields such as aviation, although the trend is upward.

- Compared to White men, promotion rates for White women are about the same. But promotion rates for Black men and women are lower at some rank levels. Potential factors contributing to the different promotion rates for minorities and women are: educational/pre-commissioning preparation, initial assignments contributing to a "slow start", and limited access to peer and mentor networks.

- Some minority and female members believe they are held to a higher standard than majority race and male colleagues and feel they must pass "tests" to demonstrate their worth on the job.

- Officers who felt they had been discriminated against generally believed that an individual, rather than the military institution, committed the act.

- Many women and minority officers felt that, overall, they had been treated fairly and that the equal opportunity climate was not better, but probably worse, in the private sector.

194. The report on the Armed Forces Equal Opportunity Survey provided similar and corroborating information. The survey is the first of its kind and was administered to 76,000 military members from the enlisted to the officer ranks. The survey results reflected areas where the Department's actions have been successful and areas where the Department's actions require attention. Some of the key findings were:

- There are differences in the way service members of different races and ethnic groups perceived the state of equal opportunity. Black service members tended to be more pessimistic about the degree of progress in equal opportunity than were members of other race or ethnic groups.

- Many service members of all races and ethnic groups reported negative experiences they felt were based on their race or ethnicity. Service members reported having had such experiences both on military installations and in surrounding communities.

- Minority service members were more likely than Whites to report being unfairly punished. Some 9 per cent of Blacks, 6 per cent of Hispanics, 5 per cent of American Indian/Alaska Natives, and 4 per cent of Asian/Pacific Islanders reported being unfairly punished in comparison to only 2 per cent of Whites.

- Relatively small percentages of members in each racial/ethnic group said they experienced an incident of harassment or discrimination related to the military personnel system.

- Service members perceived that there had been greater improvement in race and ethnic relations in the military than in civilian society and that opportunities and conditions were better in the military than in civilian society.

195. In the memorandum transmitting the Armed Forces Equal Opportunity Survey report to the Secretaries of the Military Departments and the Chairman of the Joint Chiefs of Staff, Secretary of Defense William Cohen wrote: "I am convinced that this important survey can inform our actions as we work to improve our processes and practices that are designed to ensure equal opportunity for fair treatment of all men and women in uniform. To this end, a complete electronic file of the survey data is being provided to each Service to assist in their review and in the assessment of modifications and improvements of Service programmes and procedures that may be warranted." Secretary Cohen followed this guidance with a call for a meeting of the Department's senior leadership to review the survey results and the career progression report.

196. The Department of Defense plans to use both the report on the Career Progression of Minority and Women Officers and the report on the Armed Forces Equal Opportunity Survey to evaluate the effectiveness of its efforts in equal opportunity into the next millennium.

197. Department of Education. The Department of Education regularly prepares reports on the nation's education system, which helps guide U.S. education policy and how it should address disparities among students of different races, ethnicity and national origin. Most recently, the Department's "Condition of Education and the National Assessment of Educational Progress" (NAEP) reflects progress in narrowing the education gap in the United States and provides insight into how policy might be crafted to address existing disparities in education.

198. For instance, the 2000 Condition of Education report indicates that long-term NAEP trend data show that the achievement gap between White and Black students has decreased over the past 30 years in reading.[5] Despite such gains in the achievement of Black students, the average scores of Black students remain lower than those of Whites at all ages tested. This gap exists when children first enter school. The U.S. Department of Education's Early Childhood Longitudinal Study found that, in fall 1998, White kindergarteners were more likely than their Black peers to demonstrate proficiency in reading and mathematical skills. Significantly, the rates of high school completion of Blacks have risen more than those of Whites since the

early 1970s. This advance substantially closed the gap between the Black and White rates. Unfortunately, the gap between Hispanic and White rates of completion has persisted and remains a continuing challenge.

199. The rates of college completion for Black and Hispanic high school completers rose between 1971 and 1998. However, because the college completion rate for young White adults increased faster, the gaps in higher education attainment between Whites and Hispanics and Whites and Blacks have actually grown. Furthermore, Whites still enrol in college at higher rates than Blacks and Hispanics.

200. In mathematics, the latest NAEP report reflects general progress. Overall, students' scores on the NAEP 1996 mathematics assessment increased for all three grades assessed (4, 8, and 12). Scores were higher in 1996 than in 1992 for all three grades. Black and Hispanic students recorded increases in their average mathematics scale scores for grades 4 and 12 over the period 1990 to 1996, although the gaps between scores for these subgroups did not change in 1996.

201. Students also have demonstrated progress in reading. The NAEP 1998 Reading Report Card indicated increases in average reading scores for grades 4, 8 and 12. At the fourth and twelfth grades, the national average score was higher in 1998 than in 1994. At the eighth grade, the national average score was higher in 1998 than in 1994 and 1992. At grade 4, for Black students, the average reading score was higher in 1998 than in 1994. At grade 8, increases were evident for both White and Black students. At grade 12, increases were evident for both White and Hispanic students.

202. The Department of Education uses studies like this to craft policy initiatives to address educational disparities in the United States. Some examples include its support and promotion of magnet schools, the elimination of segregation of English language learners, the promotion of equity in testing, the identification of gifted and talented minority students, and initiatives to increase minority enrolment in and graduation from institutions of higher learning.

Legislative review

203. Employment. The statutory centrepiece of the nation's effort to eliminate race discrimination in employment is Title VII of the Civil Rights Act of 1964. This Act was the first piece of legislation targeting race discrimination in employment since the post-Civil War era Civil Rights Act of 1866. Passage of this Act was the product of the civil rights movement and the gradual process of bringing race issues into the national conscience in the 1950s and 1960s. The original civil rights bill proposed in 1963 primarily addressed voting rights, denial of public accommodations, and denial of educational opportunities, but did not address employment discrimination. Employment discrimination was excluded because at the time it was considered to be an explosive issue that might defeat passage of the bill into law, just as many similar proposals had been defeated in the past.

204. Notwithstanding the immense controversy over whether the bill should prohibit discrimination in employment, the bill ultimately was amended to include Title VII. This title prohibits discrimination in employment on the basis of race, colour, national origin, religion and

sex. The types of prohibited employment discrimination include hiring, discharging, compensation, all terms, benefits and conditions of employment, and any limits, segregation, or classifications that would tend to deprive an individual of employment opportunities (42 U.S.C. sec. 2000e-2 (a)). Moreover, the statute covers not only employers, but also employment agencies and unions (42 U.S.C. sec. 2000e-2 (b) and (c)). Title VII also created a new, independent, bi-partisan executive agency, the Equal Employment Opportunity Commission (EEOC). Under Title VII, the EEOC was charged with enforcing Title VII by investigating charges of discrimination and attempting to resolve meritorious charges through conciliation.

205. Under the original enactment of Title VII, the EEOC lacked the authority to enforce the law in cases where the EEOC was unable to secure voluntary compliance. Between 1966 and 1971, numerous bills were introduced in Congress to amend Title VII. Some of these proposals would have granted cease and desist authority to the EEOC and expanded the scope of Title VII to include all employers, while others would have eliminated the EEOC altogether. During this period, statistics revealed a continuing high unemployment rate for racial minorities and a significant wage gap between Blacks and Whites. By 1971, it was evident that the voluntary approach in Title VII was inadequate to the task of eliminating employment discrimination.

206. In 1972, Congress enacted the Equal Employment Opportunity Act, substantially increasing the scope of Title VII and strengthening its enforcement mechanisms. Coverage of the act was expanded to include state and local governments, and the minimum number of employees or union members necessary to subject an employer or a union to Title VII was reduced from 25 to 15. In addition, the 1972 amendments created the first statutory mechanism for federal employees to pursue employment discrimination claims against the Federal Government. Perhaps the most significant change in the 1972 amendments was the granting of litigation authority to the EEOC. Under this authority, the EEOC was empowered to file civil lawsuits in federal court after conducting an investigation and finding reasonable cause to believe discrimination had occurred. The amendments reserved for the Department of Justice the authority to file suit against state and local governments.

207. In 1990, a bill was introduced in Congress for the purpose of negating several decisions of the Supreme Court that had diluted the protections of Title VII. At the same time, civil rights advocates were proposing to expand the remedies available to victims of discrimination in the workplace. Although controversial, the bill was ultimately enacted into law as the Civil Rights Act of 1991. The Act contains many important provisions restoring protections eroded over time and creating new remedies. For example, the Act authorized jury trials and compensatory and punitive damages in cases of intentional discrimination. Previously, all trials were before judges, and monetary remedies were limited to lost past and future salary. In addition, the Act recognized "mixed motives" cases, whereby an employer violated Title VII if race was a motivating factor for any employment practice, even though other factors also motivated the employment decision. While the Act provided important substantive rights for victims of race discrimination, it did not resolve certain important questions. For example, the Act did not define the "business necessity" defence applicable to adverse impact claims, even though it was the subject of extended debate in Congress.

208. As the above example indicates, anti-discrimination laws undergo continuous revision in the United States. State anti-discrimination legislation receives similar treatment in each individual state legislature. The United States is committed - at all levels of government - to continue to review and revise existing legislation to adapt to a changing environment and to further more effectively the goals of the Convention.

209. Voting. By 1965, concerted efforts to break the grip of state-sponsored disfranchisement of Black voters had been under way for some time, but had achieved only modest success overall and in some areas had proved almost entirely ineffectual. The murder of voting-rights activists in Philadelphia, Mississippi, gained national attention, along with numerous other acts of violence and terrorism. The conflicts culminated with the 7 March 1965 attack by Alabama, state troopers on peaceful voting rights marchers who were crossing the Edmund Pettus Bridge in Selma, Alabama, en route to the state capitol in Montgomery. This unprovoked act of violence persuaded the President and Congress to overcome southern legislators' resistance to effective voting rights legislation. President Johnson issued a call for a strong voting rights law and hearings began soon thereafter on the bill that would become the Voting Rights Act.

210. Congress determined that the existing federal anti-discrimination laws were not sufficient to overcome the resistance by state officials to enforcement of the Fifteenth Amendment. The legislative hearings showed that efforts by the Department of Justice to eliminate discriminatory election practices through case-by-case litigation had been unsuccessful: as soon as one discriminatory practice or procedure was proven to be unconstitutional and enjoined, a new one would be substituted in its place and litigation would have to commence anew.

211. The resulting legislation, which President Johnson signed into law on 6 August 1965, temporarily suspended literacy tests, and provided for the appointment of federal examiners (with the power to register qualified citizens to vote), in those jurisdictions that were "covered" according to a formula provided in the statute (now all or part of 16 states). In addition, under Section 5 of the Act certain "covered" jurisdictions were required to obtain prior approval, or "pre-clearance", from the Federal Government (either the U.S. District Court in Washington, D.C. or the Attorney-General of the United States) before they were permitted to implement any new voting practices or procedures. Section 2 of the Act, which closely followed the language of the Fifteenth Amendment, applied a nationwide prohibition of denial or abridgement of the right to vote on account of race or colour.

212. Congress extended Section 5 for five years in 1970 and for seven years in 1975. With these extensions Congress validated the Supreme Court's broad interpretation of the scope of Section 5 pre-clearance. During the hearings on these extensions Congress heard extensive testimony concerning the ways in which voting electorates were manipulated through gerrymandering, annexations, adoption of at-large elections and other structural changes to prevent newly registered black voters from effectively using the ballot. Congress also heard extensive testimony about voting discrimination that had been suffered by Hispanic, Asian and Native American citizens. In response to this latter concern, the 1975 amendments added protections against discrimination in voting for minority-language citizens.

213. In 1982, in response to the Supreme Court's decision in Mobile v. Bolden (holding that the Voting Rights Act prohibited only purposeful discrimination), and after extensive hearings, Congress amended Section 2 of the Voting Rights Act to prohibit expressly state practices or procedures that had the effect of discriminating against minority voters. This change has greatly strengthened the enforcement efforts of both the Department of Justice and private parties. In addition, in 1982 Congress also renewed Section 5 of the Act for 25 years.

214. Housing. For over 100 years after Reconstruction, governmental practices in the U.S. contributed to segregated housing in the United States. For many years, the Federal Government itself was responsible for promoting racial discrimination in housing and residential segregation. This changed with the passage of the Fair Housing Act in 1968. Passage of this Act provided a sign of hope that the terrible racial divisions within the country, reflected in the violence that enveloped the nation following the assassination of Dr. Martin Luther King Jr., could be healed. Declaring that it is "the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States", the Act prohibited discrimination in housing on the basis of race, colour, religion, or national origin. At the time, the Act was hailed as "a detailed housing law, applicable to a broad range of discriminatory housing practices and enforceable by a complete arsenal of Federal authority" (Jones v. Alfred H. Mayer Co., 392 U.S. 409, 417 (1968)). However, this characterization of the 1968 Act was true only when contrasting the Act with prior existing law.

215. The "arsenal of Federal authority" provided by the 1968 Act was far from powerful or complete. Indeed, the Supreme Court noted only a few years after Jones that "the Housing Section of the Civil Rights Division had less than two dozen lawyers", and concluded that "complaints by private persons [were] the primary method of obtaining compliance with the Act". Though the Attorney-General had brought some important cases, the authority to initiate enforcement actions was limited to situations where there was a pattern or practice of discrimination or where a group of persons had been denied rights granted by the Act, and such denial "raise[d] an issue of general public importance". In addition, the Act limited the Attorney-General to seeking "preventive relief", which the courts construed as limited to equitable relief. Although the 1968 Act empowered HUD to receive and investigate individual complaints of discrimination, neither HUD nor DOJ had authority to initiate enforcement actions based on such complaints. The Act required individuals to bring their own lawsuits if they desired judicial resolution of their claims.

216. In time, Congress recognized the impediments to effective governmental enforcement of the 1968 Fair Housing Act and addressed them by passing the Fair Housing Amendments Act (FHAA) of 1988. The 1988 amendments expanded the Act to cover discrimination against persons with disabilities and families with children and greatly expanded the Federal Government's role in enforcing the Fair Housing Act: the amendments gave both HUD and DOJ the authority to address discriminatory complaints from individuals and gave DOJ specific authority to seek compensatory and punitive damages for persons aggrieved by discrimination in both individual and pattern-or-practice cases. In pattern-or-practice cases, the amended Act allows DOJ to seek civil penalties of up to $50,000 for a first violation and up to $100,000 for subsequent violations of the statute. This ability to obtain monetary relief greatly enhances

DOJ's authority. Defendants now know that a suit by DOJ (or an administrative enforcement action by HUD) can mean costly damage awards and civil penalties in addition to litigation expenses.

217. After the amended Act went into effect, the number of civil fair housing cases brought by DOJ increased from approximately 15 to 20 in the years prior to the 1988 amendments to a peak of 194 cases in 1994.

Judicial review

218. Both the federal and state judiciary provide extensive avenues for judicial review of both anti-discrimination law and discriminatory practices in the United States. In the years since the seminal case of Brown v. Board of Education, 347 U.S. 483 (1954), U.S. courts have played a key role in the review of governmental, national and local policies that may have the effect of creating or perpetuating racial discrimination. Four areas in which U.S. courts have been particularly active in reviewing and shaping anti-discrimination law have been in employment, voting, housing and education.

219. Employment. In the early years after the enactment of Title VII, many cases of race discrimination were proven with direct evidence of a racial bias. Direct evidence is generally understood as biased statements made or adopted by an employer's decision-makers. However, as employers became more aware of the prohibitions in the new law, race discrimination increasingly took on more subtle forms. In 1973, the Supreme Court held in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), that discrimination may also be proven by indirect, or circumstantial, evidence, and it established the disparate treatment theory of proving discrimination. Specifically, McDonnell Douglas established the elements of a prima facie case of race discrimination; the defendant's burden to articulate a legitimate, non-discriminatory reason for its actions; and the plaintiff's burden to show that the defendant's articulated reason is a mere pretext for a discriminatory motive. This paradigm continues to function, with only minor modifications, as the most common theory for proving race discrimination.

220. In 1971, the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971), examined the issue of whether race discrimination prohibited by Title VII includes cases where the employer lacks a discriminatory motive. The Griggs decision established the adverse impact theory of proving discrimination, holding that a plaintiff may prove race discrimination where an employer's policy or practice is neutral on its face, yet is discriminatory in operation and is not justified by business necessity. The Supreme Court later established a more stringent test for establishing adverse impact claims, but Congress restored and clarified the Griggs standard in the Civil Rights Act of 1991.

221. Another commonly used method of proving race discrimination is the harassment theory. Over the years, appellate courts have consistently held that Title VII prohibits racial harassment, even where it entails no tangible job detriment. See, e.g., Daniels v. Essex Group, 937 F.2d 1264 (7th Cir. 1991); Vance v. Southwestern Bell Tel. & Tel. Co., 863 F.2d 1503 (11th Cir. 1989); Rogers v. EEOC, 454 F.2d 234 (5th Cir. 1971). Under this theory of discrimination, an

employer may violate Title VII where it subjects employees to severe or pervasive unwelcome conduct because of their race. Under certain circumstances, employers can even be vicariously liable for harassment by co-workers.

222. Voting. The Voting Rights Act, enacted in 1965, did not include a provision prohibiting the imposition of poll taxes, but instead, it directed the Attorney-General to challenge its use. In Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966), the Supreme Court held Virginia's poll tax to be unconstitutional under the Fourteenth Amendment. Between 1965 and 1969 the Supreme Court also issued several key decisions upholding the constitutionality of Section 5 and affirming the broad range of voting practices for which prior federal approval ("preclearance") was required. As the Supreme Court stated in its 1966 decision upholding the constitutionality of the Act:

> "Congress had found that case-by-case litigation was inadequate to combat wide-spread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims."

(South Carolina v. Katzenbach, 383 U.S. 301, 327-28 (1966)). See also Allen v. State Board of Elections, 393 U.S. 544 (1969) (recognizing that gerrymandered district boundaries or at-large elections could be used to dilute minority voting strength).

223. Some years later, in 1973 the Supreme Court held certain legislative multi-member districts unconstitutional under the Fourteenth Amendment on the ground that they systematically diluted the voting strength of minority citizens in Bexar County, Texas. This decision in White v. Regester, 412 U.S. 755 (1973), strongly shaped litigation through the 1970s against at-large systems and gerrymandered redistricting plans. However, in Mobile v. Bolden, 446 U.S. 55 (1980), the Supreme Court held that any constitutional claim of minority vote dilution must include proof of a racially discriminatory purpose. This requirement was widely seen as making such claims far more difficult to prove. As noted above, Congress amended the Voting Rights Act in response to Mobile v. Bolden to prohibit procedures or practices that have the effect of discrimination against minority voters.

224. In Shaw v. Reno (1993), the Supreme Court for the first time recognized an "analytically distinct" equal protection claim for challenging a redistricting plan that allegedly constitutes a racial classification. In Shaw, the Court held that five North Carolina voters had stated a claim under the Equal Protection Clause in alleging that the state's congressional redistricting plan contained districts shaped so dramatically irregular that they could only be viewed as having been drawn along racial lines. In a series of subsequent cases, chief among them Miller v. Johnson in 1995 and Bush v. Vera in 1996, the Court developed an elaborate framework for the adjudication of these Shaw claims. Under that framework, the plaintiff's initial burden is to show that the state used race as the "predominant factor" in the design of the challenged district, "subordinat[ing] traditional race-neutral districting principles ... to racial

considerations". If the plaintiff makes this showing, the plan is subject to strict scrutiny and will be held unconstitutional unless the state demonstrates that its use of race was narrowly tailored to achieve a compelling state interest.

225. The appropriate application of this new constitutional cause of action - and its interaction with the Voting Rights Act - has been the subject of great debate and the law in this area is still evolving.

226. Housing. In the years since the enactment of the Fair Housing Act, there have been many important decisions by the federal courts that have shaped housing discrimination law. See e.g., United States v. West Peachtree Tenth Corp., 437 F.2d 221, 228 (5th Cir. 1971) (setting forth a model remedial decree for fair housing cases); United States v. City of Black Jack, 508 F.2d 1179 (8th Cir. 1974) (United States successfully challenged racially discriminatory zoning practices that had precluded development of racially integrated, low-income housing in a St. Louis suburb); United States v. Hunter, 459 F.2d 205 (4th Cir.), cert. denied, 409 U.S. 934 (1972) (holding that Section 804 (c), 42 U.S.C. sec. 3604 (c), prohibited the publication of an advertisement for an apartment in a "White home" without violating the First Amendment).

227. Two of the most important Supreme Court cases in this area are Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205, 209, 211 (1972) and Havens v. Coleman, 455 U.S. 365 (1982). In Trafficante, the Supreme Court held that existing tenants in an all-White housing complex have standing to sue under the Fair Housing Act to redress the landlord's discrimination against Blacks who desired to become tenants. In Havens, the Court held that fair housing "testers" (matched pairs of Blacks and Whites who pose as homeseekers in order to detect whether the housing provider is unlawfully discriminating) and fair housing organizations have a right to sue in federal court under certain circumstances. After these two important Supreme Court decisions, standing under the Fair Housing Act is as broad as Congress could have made it.

228. Education. The establishment of a judicial framework for eliminating race discrimination in education began to evolve in the 1930s with challenges to the legalized denial of equal protection of the laws. In San Diego, California, for example, children of Mexican descent challenged segregation successfully in state court in Alvarez v. The Board of Trustees of the Lemon Grove School District. (Superior Court of the State of California, San Diego, Petition for Writ of Mandate No. 66625, 13 February 1931). Local school officials in Lemon Grove, California barred Mexican students from the local school, instead directing them to a separate, inferior building. The children refused to attend, and they challenged the school board. The state court ruled that the school board had no legal right to segregate the children.

229. The assault in the federal courts began with an attack on the absence of professional and graduate schools for Blacks. These efforts bore initial fruit in 1938 when the Supreme Court ruled in Missouri ex rel. Gaines v. Canada, 305 U.S. 337 (1938), that each state had a legal responsibility to provide an equal education within its borders and ordered the admission of a Black student to the School of Law at the State University of Missouri. In 1950, the Court also ruled in Sweatt v. Painter, 339 U.S. 629 (1950), that the state of Texas violated the Fourteenth Amendment's Equal Protection Clause when it refused to admit the petitioner to the University of Texas Law School.

230. Led by future Supreme Court Justice Thurgood Marshall, Blacks directly challenged the separation of the races in education in the seminal case of Brown v. Board of Education of Topeka (Brown I) (347 U.S. 483 (1954)). The Court noted the importance of education as "perhaps the most important function of state and local governments", and concluded, "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal".

231. Later, in concert with congressional action on the issue of equal educational opportunity, the Supreme Court repeatedly required school districts to take action that achieved integration, rather than merely removed legal barriers. The Supreme Court supported these requirements in Green v. County School Board of New Kent County, 391 U.S. 430 (1968); Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969); and Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 30-31 (1971).

232. Then, in Keyes v. School District No. 1 413 U.S. 189 (1973), the Court made clear that the North and West were required to comply with the Court's desegregation mandates. In Keyes, the Court required the City of Denver to dismantle a school system that its school districts had purposefully segregated .

233. To deal with discrimination on the basis of race and ethnicity as complicated by language differences, the Supreme Court determined in Lau v. Nichols, 414 U.S. 563 (1974), that the failure of a school system to provide appropriate services to Chinese students who were not proficient in English to allow meaningful participation in the educational process. It therefore constituted discrimination under Title VI of the Civil Rights Act.

234. The Supreme Court has also dealt some blows to desegregation and equality in education. In San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 12-14, 55 (1973), the Court held that the vastly unequal expenditures between different school districts did not violate the Equal Protection Clause despite the concentration of minority students in districts with drastically lower expenditures. In Milliken v. Bradley, 418 U.S. 717, 745 (1974), the Court excluded many suburban districts from desegregation plans by limiting desegregation remedies to the school district in which the constitutional violation occurred. As Whites rushed to the suburbs, this decision limited options for desegregation in many cities that had large concentrations of minority students and few Whites.

235. Disparate impact. With respect to the second obligation of article 2 (1) (c), practices that have discriminatory effects are prohibited by certain federal civil rights statutes, even in the absence of any discriminatory intent underlying those practices. Thus, such practices may be nullified under the force of those statutes, consistent with article 2 (1) (c). This is true of the Voting Rights Act of 1965, which Congress amended in 1982 to make clear that practices that have a discriminatory effect on minority voters violate Section 2 of that statute. The same is true under Title VII of the 1964 Civil Rights Act, the federal regulations implementing Title VI of the 1964 Civil Rights Act, and the Fair Housing Act, as those statutes have been interpreted by the Supreme Court and lower courts (Griggs v. Duke Power Co., 401 U.S. 424 (1971) (Title VII); Guardians Ass'n v. Civil Serv. Comm'n, 463 U.S. 582 (1983) (Title VI implementing regulations); R. Schwemm, Housing Discrimination Law and Litigation sect. 10.04 (1990)

(noting that although the Supreme Court has yet to address the issue, lower courts have uniformly held that disparate impact claims may be brought under the Fair Housing Act, even in the absence of discriminatory intent)).

236. While evidence of a disparate impact alone can establish a violation of the Voting Rights Act, the Fair Housing Act and Titles VI and VII of the 1964 Civil Rights Act, it is not sufficient to demonstrate a constitutional violation of equal protection (under the Fifth or Fourteenth Amendments). In such cases, the plaintiff must establish that the challenged act was done with discriminatory intent. See Washington v. Davis, 426 U.S. 229 (1976) (Equal Protection Clause); General Building Contractors Ass'n, Inc. v. Pennsylvania, 458 U.S. 375 (1982) (18 U.S.C. sec. 1981); R. Schwemm, Housing Discrimination Law and Litigation sect. 10.04 (1990). This is not to say that disparate impact is irrelevant in equal protection or Sections 1981 or 1982 litigation, however. Determining whether discriminatory purpose exists "demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available". Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266 (1977). As the Supreme Court noted in Arlington Heights, disparate impact "may provide an important starting point" for that inquiry (Id.). Indeed, where racial disparities arising out of a seemingly race-neutral practice are especially stark, and there is no credible justification for the imbalance, discriminatory intent may be inferred. (Casteneda v. Partida, 430 U.S. 482 (1977)). In most cases, however, adverse effect alone is not determinative, and courts will analyse statistical disparities in conjunction with other evidence that may be probative of discriminatory intent. (Arlington Heights, 429 U.S. at 266-67). If the totality of the evidence suggests that discriminatory intent underpins the race-neutral practice, the burden shifts to the defendant to justify that practice. See Mt. Healthy City School Bd. of Education v. Doyle, 429 U.S. 274 (1977).

237. In its General Recommendation XIV, the Committee declared that "in seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or ethnic origin". The Committee's use of the term "unjustifiable disparate impact" indicates its view that the Convention reaches only those race-neutral practices that both create statistically significant racial disparities and are unnecessary, i.e., unjustifiable. This reading of article 2 (1) (c) tracks the standards for litigating disparate impact claims under Title VII, the Title VI implementing regulations, and the Fair Housing Act. It is also consistent with equal protection and Sections 1981 and 1982 standards, to the extent that statistical proof of racial disparity - particularly when combined with other circumstantial evidence - is probative of the discriminatory intent necessary to make out a claim under those provisions. In the view of the United States, article 2 (1) (c) does not impose obligations contrary to existing U.S. law.

238. Article 2 (1) (d) requires each State party to "prohibit and bring to an end, by all appropriate means, including legislation as required by the circumstances, racial discrimination by any persons, group or organization". As indicated above, governmental policy at all levels reflects this undertaking, and there are many different mechanisms, including litigation and legislation, through which this important goal is being achieved by the United States.

239. As discussed in the context of the United States reservations, understandings and declarations above, there are important constitutional limits on the permissible reach of governmental regulation in the United States. For the reasons articulated in that discussion above, the United States conditioned its ratification on a formal reservation stating that, to the extent the Convention calls for a broader regulation of private conduct than permissible under U.S. law, the United States does not accept any obligation under this Convention to enact legislation or take other measures under paragraph (1) of article 2, subparagraphs (1) (c) and (d) of article 2, article 3 and article 5 with respect to private conduct except as mandated by the Constitution and laws of the United States.

240. Under article 2 (1) (e), each State party undertakes "to encourage, when appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division".

241. As part of his Initiative on Race, President Clinton has taken important steps to encourage various sectors of United States society to celebrate diversity and work toward the goal of building One America by promoting racial reconciliation and encouraging racial equal opportunity for all.

242. For example, on 20 July 1999, President Clinton issued a call to action to the legal community to enlist their support in the fight for equal justice. Leading organizations in the United States, including the American Bar Association, the American Corporate Counsel Association, the Association of American Law Schools and the Lawyers Committee for Civil Rights, responded by forming the "Lawyers for One America". Lawyers for One America is a unique collaboration with a mission to promote racial justice through increased pro bono legal service and diversity initiatives within the legal community.

243. On 9 March 2000, President Clinton met with a broad group of American religious leaders to highlight new commitments and programmes they have pledged to undertake within the faith community to ensure that the nation's religious organizations are doing their part to expand diversity, end racism and promote racial reconciliation. At the meeting, the National Conference for Community and Justice (NCCJ) pledged to hold a national forum of faith leaders to share information on their efforts and to seek commitments from other faith leaders to address race issues.

244. On 6 April 2000, President Clinton met with the leaders of the nation's largest corporations to challenge them to promote diversity and make commitments to expand economic opportunities to racial minorities and close the opportunity gap that exists in the United States. At the meeting, several corporate leaders pledged to convene dialogues on racial issues, workplace diversity and employment equity during the next year. In addition, 25 leading companies pledged to spend $250 million, $1 million per year for the next 10 years, to expand diversity in the high technology workforce.

245. Also inspired by President Clinton's leadership on race relations, numerous cities in the United States, like Indianapolis, Indiana and Grand Rapids, Michigan, have held or are planning to hold day-long "race summits" that bring together people of diverse backgrounds to hold dialogues on racial reconciliation.

246. The Department of Justice promotes the goals of article 2 (1) (e) through active involvement in communities beset by either actual or potential destructive racial conflict. The Department's Community Relations Service sends experienced mediators to assist local communities in resolving and preventing racial and ethnic conflict, violence or civil disorder. For over 30 years, the Department has played an enormously positive role in conflict prevention at the local level.

247. The Equal Employment Opportunity Commission (EEOC) seeks to eliminate racial discrimination through education and prevention, and by publishing policy guidance statements, compliance manuals and other educational materials. The EEOC also regularly sponsors nationwide technical assistance programme seminars, and makes presentations to employee and employer interest groups. Within the past two years, the EEOC has developed a comprehensive Web site <http://www.eeoc.gov> and launched a mediation programme in each of its district offices, with the goal of resolving charges of discrimination while preserving working relationships.

248. Special measures. Article 2 (2) provides that, when circumstances so warrant, States parties shall take "special and concrete measures" for the "adequate development and protection of certain racial groups or persons belonging to them for the purpose of guaranteeing to them the full and equal enjoyment of human rights and fundamental freedoms". Article 1 (4) specifically excludes from the definition of "racial discrimination" "[s]pecial measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection" in order to provide equal enjoyment of human rights and fundamental freedoms. Such measures may not, however, lead to the maintenance of "unequal or separate rights for different racial groups" or "be continued after the objectives for which they were taken have been achieved".

249. Together, article 1 (4) and article 2 (2) permit, but do not require, States parties to adopt race-based affirmative action programmes without violating the Convention. Deciding when such measures are in fact warranted is left to the discretion of each State party.

250. At the federal level, the United States has been pursuing such "special measures" for many years. For much of this century, racial and ethnic minorities and women have confronted a variety of legal and social barriers to equal opportunity in the United States. Segregated, inferior schooling combined with historic economic disadvantage left many effectively barred from participating in the benefits of a growing national economy. Even after the legal barriers to equal treatment were removed, the residual economic and social effects remained.

251. In 1961, President John F. Kennedy issued an Executive Order (No. 10925) which used the term "affirmative action" to refer to measures designed to achieve non-discrimination in employment. Four years later, President Lyndon Johnson signed Executive Order 11246, requiring federal contractors to take affirmative action to ensure equality of employment opportunity without regard to race, religion and national origin. In 1967, the Executive Order was amended to add gender as a prohibited basis of discrimination. The most far-reaching expansion of the affirmative action approach at the federal level took place in 1969 in connection with the so-called "Philadelphia Order" concerning construction trades in Philadelphia, Pennsylvania.

252. The concept of using affirmative action to ensure equality of opportunity was initially incorporated into federal statutory law through Title VII of the Civil Rights Act of 1964, which aimed at ending discrimination by large private employers whether or not they had government contracts.

253. A substantial number of existing federal ameliorative measures could be considered "special and concrete measures" for the purposes of article 2 (2). These include the array of efforts designed to promote fair employment, statutory programmes requiring affirmative action in federal contracting, including sheltered corporations, race-conscious educational scholarships, and direct support for historically Black colleges and universities, Hispanic-serving institutions and Tribal Colleges. Some are hortatory, such as those based in statutes encouraging recipients of federal funds to use minority-owned and women-owned banks. Others are mandatory; for instance, the Community Reinvestment Act requires federally chartered financial institutions to conduct and record efforts to reach out to under-served communities, including, but not limited to, minority communities. Still others focus on targeted outreach and training efforts; for instance, the U.S. Department of State maintains the Foreign Affairs Fellowship Program, an initiative designed to increase minority participation in the Foreign Service.

254. The Small Business Act requires each federal agency to set goals for contracting with "small and disadvantaged businesses". Under its so-called "Section 1207" authority, the Defense Department is permitted to provide a 10 per cent bid price preference and to employ reduced-competition systems when necessary to meet its "small and disadvantaged businesses" contracting goals. The Omnibus Diplomatic Security and Anti-Terrorism Act requires that a minimum of 10 per cent of funds appropriated for diplomatic security projects be allocated to minority business enterprises. Certain small education grant programmes (e.g., those under the Patricia Roberts Harris Fellowship, 20 U.S.C. sec. 1134d-g, and the Women and Minorities in Graduate Education Program, 20 U.S.C. sec. 1134a) target minorities in graduate education. The Department of Agriculture gives preferences to "socially disadvantaged" persons in the sale of farm properties and sets aside loan funds for farmers in this group. The Department of the Treasury administers a "minority-owned bank deposit" programme in which designated banks receive special consideration to act as depositary institutions holding cash for federal agencies, so long as no increased cost or risk results to the Government. The Department of Transportation gives preferences to small businesses owned and controlled by socially and economically disadvantaged individuals in Department of Transportation-assisted contracts.

255. The Clinton Administration has placed substantial emphasis on increasing educational opportunities for minorities in the United States. For instance, the Hispanic Education Action Plan is designed to provide targeted assistance to raise the educational achievement of Hispanic students and to close the achievement gap. The Plan incorporates a number of other programmes, such as the State Agency Migrant Program and "Gear Up".

256. Enacted in 1998 and administered by the Department of Education, Gear Up funds partnerships of high-poverty middle schools, colleges and universities, community organizations, and businesses. The partnerships provide tutoring, mentoring, information on college preparation and financial aid, an emphasis on core academic preparation, and, in some cases, scholarships. In its first year, Gear Up is serving nearly 450,000 students nationwide.

Over 1,000 organizations are Gear Up partners, including colleges and universities, libraries, arts organizations, local chambers of commerce, the YMCA, Boys and Girls Clubs, Wal-Mart, Unisys, and the New York Times Education Program. In the upcoming year, Gear Up is expected to serve over 750,000 students.

257. The U.S. Small Business Administration (SBA) administers several programmes that could be considered "special measures" under article 2 (2).

258. The 8 (a) Business Development Program and the Small Disadvantaged Business Certification and Eligibility Program (SDB Certification Program) assist small businesses owned and controlled by one or more individuals determined by SBA to be socially and economically disadvantaged. Socially disadvantaged individuals are those who have suffered chronic and substantial discrimination during their education, employment or business operation as a result of their membership in a particular group of people, rather than as a result of their individual characteristics. While people in certain minority ethnic groups are presumed to be socially disadvantaged, others who individually prove their social disadvantage also meet this criterion. The reasons cited for discrimination against individuals not in presumed groups include, in part, gender, age and disabilities. A finding of individual social disadvantage must also be related to unequal business opportunities as a result of discrimination suffered.

259. Another criterion the SBA reviews is the economic net worth of the disadvantaged owners. Net worth, after exclusion of an individual's equity in his or her primary residence and the applicant business, may not exceed $250,000 and $750,000, respectively, for the 8 (a) Business Development Program and the Small Disadvantaged Business (SDB) Certification Program.

260. The 8 (a) Program offers a broad scope of assistance to the socially and economically disadvantaged firms, including both business development assistance and eligibility for set-aside federal contracts. The 8 (a) Program, which has been in existence since 1969, has become an essential instrument in helping socially and economically disadvantaged entrepreneurs gain access to the economic mainstream of American society. SBA has helped thousands of aspiring entrepreneurs over the years gain a foothold in government contracting. Participation is divided into two phases over nine years: a four-year developmental stage and a five-year transition stage. In fiscal year 1998, more than 6,100 firms participated in the 8 (a) Program and were awarded $6.4 billion in federal contracts.

261. While the 8 (a) and the SDB Certification Programs are, perhaps, SBA's most recognized programmes, additional agency initiatives have been developed making business opportunities and economic independence a reality to minorities heretofore denied access to the mainstream economy. In 1997, the SBA began its Welfare to Work Initiative to link small business owners looking for job-ready workers with organizations that train welfare recipients and provide entrepreneurial training to those who wish to start their own businesses. The goal was 200,000 pledges to hire job-ready welfare recipients and/or provide entrepreneurial training. The Initiative has been very successful, with the latest number of pledges and training reaching more than 215,000. Most of the recipients were either socially or economically disadvantaged or both, with minorities overwhelmingly represented.

262. Another SBA Initiative reaches out to the Native American community to help combat a history of being discriminated against as a result of maintaining ties to a traditional lifestyle. One of the primary responsibilities of SBA's Office of Native Affairs, in partnership with SBA's Office of Business Initiatives, is to support and manage 17 Tribal Business Information Centers (TBICs). TBICs are partnerships between SBA and Native American Tribes or Tribal Colleges and are located in seven states (Arizona, California, Montana, Minnesota, North Carolina, North Dakota and South Dakota). They offer access to up-to-date technology and resources libraries as well as practical, culturally appropriate guidance at accessible reservation locations. In 1999, the TBICs provided entrepreneurial development assistance to 3,951 clients, provided 8,433 hours of counselling, held 291 workshops, assisted in the completion of 196 business plans and 136 loan applications, and were instrumental in the start-up of 212 new businesses.

263. Individuals experiencing racial discrimination or social and economic discrimination are often located in distressed areas. SBA's One Stop Capital Shops target these areas of high unemployment and pervasive poverty whose inhabitants are usually members of minority groups. SBA's One Stop Capital Shops provide a broad range of services to these highly underutilized business zones (HUB Zones) and Empowerment Zones including credit counselling and business development assistance. In 1999, One Stop Capital Shops served over 53,000 clients, including 18,000 Hispanic and 12,000 Black clients. Government assistance through the use of incentives to revitalize these "New Markets" areas is essential to break down continuing decay and offer hope for economic growth and prosperity for residents of these communities.

264. The elimination of racism and discrimination takes more than outreach to those experiencing this form of prejudice. There must also be outreach to the established institutions to assist in bringing about change. The SBA Office of Capital Access has been working with lenders participating in the 7 (j) Small Business Loan Guaranty Program and the Microloan Program. By targeting non-bank lenders who have a more accommodating posture towards the small business market, particularly lenders who are located in or near economically distressed areas, SBA expects to facilitate an increase in the number of minority, low-income, and women small business borrowers. In addition, this effort will promote further economic revitalization and development in low and moderate-income communities and rural areas across the United States.

265. Illustrative proof is the Microloan Program, where non-profit organizations have been making SBA-guaranteed micro-loans from under $100 to $25,000 to women, low-income individuals, minority entrepreneurs and other small businesses that need small amounts of financial assistance. Non-profit organizations have also served as intermediaries to assist women borrowers in developing viable loan application packages and securing loans.

266. In general, the proper goal of affirmative action programmes - such as those described above - is to promote equal opportunity by ensuring every person a fair chance to achieve success. Affirmative action measures recognize that existing patterns of discrimination, disadvantage and exclusion that are the remains of a race-conscious system of exclusion may require race-conscious measures to achieve real equality of opportunity. As a matter of law and policy, they may not create any form of "quotas" or "numerical straightjackets", nor may

affirmative action policies give preference to unqualified individuals, place undue burdens on persons not beneficiaries of the affirmative action programmes or continue to exist or operate after its purposes have been achieved.

267. The exact line between permissible and impermissible affirmative action measures has been one of the most difficult issues in U.S. law, and it has not been static. See, e.g., Adarand Constructors, Inc. v. Peña, 515 U.S. 200 (1995); Metro Broadcasting, Inc. v. FCC, 497 U.S. 647 (1990); City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989); Regents of University of California v. Bakke, 438 U.S. 265 (1978). In Croson, the Supreme Court held that state affirmative action plans challenged under the Constitution would be held to strict judicial scrutiny, i.e., courts would evaluate the programme to determine whether there was a compelling governmental interest in the programme's use of race and whether that use was narrowly tailored to meet this interest. Six years later, in Adarand, the Court held that that same standard of "strict scrutiny" would apply to federal affirmative action plans. This is a more demanding test than had previously been applied to federal affirmative action programmes, and it has prompted a searching analysis and re-evaluation of many such programmes.

268. Affirmative action in elementary and secondary school admissions as well as in college and university admissions has been a subject of contention; especially where the use of race is in the non-remedial context. However, language in several Supreme Court cases supports a school district's compelling interest in ensuring that children of different races attend school together. See, e.g., Brown v. Board of Education, 347 U.S. 483, 493 (1954); Washington v. Seattle School District No. 1, 458 U.S. 457, 472 (1982); Swann v. Board of Education, 402 U.S. 1, 16 (1971); North Carolina Board of Education v. Swann, 402 U.S. 43, 45 (1971). In the higher education context, a majority of the Court in Regents of the University of California v. Bakke, 438 U.S. 265, 320 (1978), reversed a lower court decision and found that a university could employ race-conscious measures even though it had not engaged in prior de jure segregation. Indeed, it is the Government's position that the educational benefits that flow from a diverse student body can be achieved through the narrowly tailored consideration of race in admissions. Some critics argue that such practices violate the Fourteenth Amendment's guarantee of equal protection and have called for an end to the consideration of race in university admissions. In 1995, the University of California's Board of Regents voted to prohibit universities within its state-wide system from considering race in admissions. The California Civil Rights Initiative, known as Proposition 209, prohibits the state from considering race or gender in state employment, public contracting or education programmes. Also in Texas v. Hopwood, 78 F.3d 932 (5th Cir.), cert. denied, 518 U.S. 1033 (1996), the Fifth Circuit Court of Appeals held that race could not be used as a factor in the admissions process for the University of Texas Law School.

269. Despite Proposition 209 and the Fifth Circuit's decision in Hopwood, the United States Government has consistently argued that the Constitution and Title VII allows for the narrowly tailored consideration of race in elementary and secondary school and university admissions, either to support a state's compelling interest in diversity or in remedying past discrimination. Ultimately, the U.S. Supreme Court will resolve this issue.

270. Moreover, the responsibility of states and local school districts to provide appropriate services to children with limited English proficiency is now well established in the law.

271. The landmark decision in Lau v. Nichols, 414 U.S. 563 (1974), which is based on Title VI of the Civil Rights Act of 1964, requires that school officials take action to provide limited English proficient students appropriate services to permit meaningful participation in the district's educational programme. The Equal Educational Opportunities Act of 1974 also requires that states and school districts take appropriate action to overcome language barriers that impede equal participation in the instructional programme. However, no particular educational methodology is mandated to come into compliance with these laws. For example, transitional bilingual education is one model that is employed by some school districts, other districts rely on English as a Second Language techniques.

272. This flexible approach is supported by the United States: school districts should employ methodology that is supported by educational research, implement fully their programmes, and evaluate them in practice. Recently, however, California has restricted to some extent the flexibility of school districts to make determinations regarding the methodology they wish to employ. Proposition 227, enacted in 1998, requires that limited-English-proficient students be placed in an English immersion programme, unless parents seek waivers and seek a transitional bilingual programme. A referendum initiative in Colorado also seeks to limit transitional bilingual education.

273. The Department of Justice recently intervened in a lawsuit in Denver, Colorado, in which the adequacy of the school district's English language acquisition programme was at issue. A settlement was reached under which a flexible programme was approved by the court that relies on both foreign language instruction and English language development techniques.

274. With regard to Native Americans, in Morton v. Mancari, 417 U.S. 535 (1974), the U.S. Supreme Court upheld a statutory Indian preference for hiring by the Bureau of Indian Affairs. The Court relied upon the statute's purpose in aiding Indian self-government and rejected the claim of unconstitutional discrimination stating that "[t]he preference is not directed towards a racial group consisting of Indians; instead, it applies only to members of federally recognized tribes ... [and i]n this sense, the preference is political rather than racial in nature". This distinction between a preference based on the political nature of Indian tribes, as opposed to race, has been and remains a fundamental legal principle supporting the unique relationship between the Federal Government and Indian tribes.

275. In recent years, there has been extensive public debate over the concept of so-called "reverse discrimination", focusing on whether affirmative action programmes are unfair to persons who do not benefit from those programmes. There have been a number of legislative proposals and state referendums designed to limit the use of affirmative action programmes to remedy past discrimination and achieve diversity in employment and education, as well as several judicial challenges. Examples include Maryland Troopers Ass'n v. Evans, 993 F.3d 1072 (4th Cir. 1993) (holding that Maryland State Police discriminated against non-Blacks by complying with the terms of a court-ordered consent decree which was held to violate Fourteenth Amendment and Title VII) and Hopwood v. Texas, 84 F.3d 720 (5th Cir. 1996), cert. denied, 518 U.S. 1033 (1996) (holding that University of Texas Law School could not use race as a factor in its admissions decisions when White applicants with higher test scores than minority applicants were denied admission).

276. In 1995, following the Supreme Court's decision in Adarand, the President ordered a thorough Executive Branch review of the Federal Government's affirmative action programmes to ensure that these programmes satisfied the Court's newly articulated legal standard. While finding "undeniable progress in many areas", the report concluded, not surprisingly, that "widespread discrimination and exclusion - and their ripple effects - continue to exist" and that the various affirmative action programmes should therefore be continued and improved. As a result, some programmes were discontinued, and the method of implementation of others was changed.

277. The Federal Government, in fact, made substantial changes in the way all agencies use affirmative action in federal contracting. Those changes ensure that race-conscious action in federal contracting is used only where there is demonstrable proof that the effects of racial discrimination continue to hinder minority-owned businesses.

278. The United States is hopeful that the changes made to federal affirmative action programmes will demonstrate not only to federal courts, but also to state and local governments that choose to use these programmes, how they can be developed in a manner that satisfies constitutional scrutiny. Indeed, in reviewing the first challenge to changes to federal contracting provisions, a court held that the programme satisfied the Constitution. The United States continues to believe that affirmative action plays an essential role in ensuring that economic and educational benefits are offered equally to all people in the United States, and that those programmes can be developed in a way that is fair to all.

279. This debate will continue. It is the United States view that its obligations under the Convention do not preclude adoption and implementation of appropriately formulated affirmative action measures consistent with U.S. constitutional and statutory provisions.

Article 3

280. Article 3 requires States parties to condemn racial segregation and apartheid and to undertake to prevent, prohibit and eradicate "all practices of this nature" in territories under their jurisdiction.

281. State-sponsored segregation and de jure discrimination have been prohibited in the United States since the enactment of the Thirteenth, Fourteenth, and Fifteenth Amendments a few years after the end of the Civil War. However, the federal courts interpreted those provisions to permit state-sponsored and private racial discrimination (so-called "separate but equal" treatment of the races) through the first half of the twentieth century. This interpretation was authoritatively overruled by the Supreme Court in 1954 in Brown v. Board of Education, which outlawed racial segregation in public schools and set the foundation for the elimination of segregation in all forms of public life. As discussed above, a series of Civil Rights Acts following that decision has extended the reach of this prohibition to many private relationships and activities. The United States emphatically condemns racial segregation and apartheid and prohibits any such practice in all territories under its jurisdiction.

282. Prior to the removal of the racist regimes in southern Africa, the United States condemned the policies and practices of those regimes and imposed economic and related sanctions in accordance with the decisions of the United Nations. Independent of the Federal Government's actions, many state and local governments as well as private institutions also acted to divest or otherwise dissociate themselves economically and politically from governments and institutions supporting or tolerating apartheid. Non-governmental groups supported economic boycotts and lobbied and pressured government at all levels to exert political and economic influence to end the racist policies in South Africa.

Article 4

283. As a nation, the American people reject all theories of the superiority of one race or group of persons of one colour or ethnic origin or theories which attempt to justify or promote racial hatred and discrimination. It is government policy to condemn such theories, and none is espoused at any level of government.

284. The Convention requires more, however. States parties must "undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination". More specifically, article 4 (a) obliges States parties to penalize four categories of misconduct:

"(i) all dissemination of ideas based on racial superiority or hatred,

(ii) incitement to racial hatred,

(iii) all acts of violence or incitement to violence against any race or group of persons of another colour or ethnic origin, and

(iv) the provision of any assistance to racist activities, including the financing thereof."

285. The Committee has stressed the importance with which it views these obligations, as reflected, for example, in General Recommendation VII adopted in 1985 in which the Committee stressed the mandatory character of article 4, and General Recommendation XV of 1993 in which the Committee stated its opinion that "the prohibition of the dissemination of all ideas based on racial superiority or hatred is compatible with the right to freedom of opinion and expression." Article 4 (b) requires States parties to declare illegal and prohibit organizations which promote and incite racial discrimination, to prohibit their propaganda activities, and to make participation in such organizations and activities an offence punishable by law. Article 4 (c) imposes an obligation to forbid public authorities and institutions from promoting or inciting racial discrimination.

286. Constitutional limitations. For the reasons described earlier, the ability of the United States to give effect to these requirements is circumscribed by constitutional protections of individual freedom of speech, expression and association. Accordingly, the United States took a reservation to this article, and to the corresponding provisions of article 7, to make clear

that it cannot accept any obligation to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States.

287. Nonetheless, there remains a substantial area in which the United States can, and does, give effect to this article.

288. Hate crimes (federal law). U.S. law has long provided criminal penalties for certain violations of civil rights, including in particular acts of violence motivated by racism. See, e.g., 18 U.S.C. sec. 245 (b) (2); 18 U.S.C. sec. 247 (c); 42 U.S.C. sec. 3631. Federal "hate crimes" law makes "an offence punishable by law" acts of violence or incitement to such acts, including the provision of assistance for such acts, including financing. In some instances, harsher penalties have been available when ordinary crimes are committed with racist intent. The Clinton Administration strongly supports legislation to expand the protections under federal hate crimes statutes.

289. In recent years, the Federal Government has undertaken a number of initiatives to combat hate crimes and violence. Central to these efforts has been the undertaking to gather information. The Hate Crimes Statistics Act of 1990, Pub. L. 101-275, 28 U.S.C. sec. 534, directs the Attorney-General to collect data from state and local law enforcement agencies about crimes that "manifest evidence of prejudice based upon race, religion, sexual orientation, or ethnicity". The Federal Bureau of Investigation's Uniform Crime Report Program is the central repository for hate crime statistics. Subsequent efforts have been directed at youth who commit hate crimes, including the development of a school-based curriculum to address prevention and treatment of hate crimes by juveniles.

290. Despite these efforts, it is a disturbing element of life in the United States that hate crimes are prevalent and widespread. In 1998, a total of 7,755 bias-motivated criminal incidents were reported to the Federal Bureau of Investigation's Uniform Crime Reporting Program by 10,730 law enforcement agencies in 46 states and the District of Columbia. Of these incidents, racial bias motivated 4,321; religious bias accounted for 1,390; sexual-orientation bias was the cause of 1,260; ethnicity/national origin bias represented 754; disability bias was associated with 25; and the remaining 5 incidents were the result of multiple biases. Sixty-eight per cent of the offences reported were crimes against persons. Indeed, 13 persons were murdered in incidents motivated by hate. The United States continually re-evaluates its laws, policies and practices in light of statistics like these in its efforts both to punish and to prevent bias-motivated crimes.

291. Hate crimes (state and local action). Forty-seven jurisdictions in the United States have enacted some form of legislation designed to combat hate crimes. A number of states, including California, Florida and Ohio, have adopted laws prohibiting specific activities at specific places, for example, vandalism and intentional disturbances at places of worship. Florida and the District of Columbia have prohibited such acts as burning a cross or placing a swastika or other symbol on another's property with intent to intimidate. Thirty-nine states have enacted laws against bias-motivated violence and intimidation; for example, a New York statute prohibits

bias-motivated discrimination or harassment. Other states (e.g., Wisconsin) provide for enhanced penalties when the motivation for an otherwise criminal act is bias. Nineteen states mandate the collection of hate crime statistics.

292. Racial and ethnic conflict and violence. The Community Relations Service (CRS), created by the Civil Rights Act of 1964, is a specialized federal conciliation service available to state and local officials to help resolve and prevent racial and ethnic conflict, violence and civil disorder. It sends experienced mediators to assist local communities' efforts to settle destructive conflicts and disturbances relating to race, colour or national origin.

293. CRS lends its services when requested or when it believes peaceful community relations may be threatened. It relies solely on impartial mediation practices and established conflict resolution procedures to help local leaders resolve problems and restore community stability. CRS has no law enforcement authority and does not impose solutions, investigate or prosecute cases, or assign blame or fault. CRS mediators are required by law to conduct their activities in confidence and without publicity; and are prohibited from disclosing confidential information. Working in partnership with the Civil Rights Division, local United States Attorneys' offices, and the Federal Bureau of Investigation, CRS plays a critical role in easing tensions in the aftermath of hate crimes and allegations of misconduct by law enforcement officers, especially where the race of the victim is alleged to have played a role in the officers' misconduct.

294. CRS race relations skills were called upon to restore stability and order in the civil unrest in Los Angeles following the Rodney King case (where four White Los Angeles police officers were caught on videotape beating Mr. King, a Black motorist), and countless other civil disturbances across the country. In response to President Clinton's call for a comprehensive response by federal agencies to address church burnings, CRS staff worked directly with more than 180 rural, suburban and urban governments in 17 states to help eliminate racial distrust and polarization, promote multiracial construction of new buildings, conduct race relations training for community leaders and law enforcement officers, and provide technical assistance in ways to bring together law enforcement agencies and minority neighbourhoods.

295. Other areas of CRS involvement include the prevention and resolution of racial conflicts arising from the integration of public and private housing. CRS works with community leaders and local law enforcement officials to coordinate responses to issues raised by integration activities. CRS also assists in disputes between tribal nations and outside communities and addresses federal, state and local government concerns over tribal jurisdiction, housing, schools, environmental, gaming, and tax issues.

296. Racism on the Internet. The Supreme Court has made it clear that communications on the Internet receive the same constitutional protections under the First Amendment that communications in other media enjoy (Reno v. ACLU, 521 U.S. 844 (1997)). Thus, material that can be proscribed or punished in print and voice media can be proscribed or punished if published on the Internet. In the past several years, the United States has investigated and prosecuted allegations of racially motivated threats over the Internet. For example, in 1996, a California man sent death threats by e-mail to numerous Asian-American students at the University of California at Irvine indicating his hatred of Asians, accusing Asians of being responsible for all crime on campus, and threatening to "hunt down" and "kill" the individuals if

307. Over-representation in the criminal justice system. The majority of all federal, state and local prison and jail inmates in the United States today are members of minority racial or ethnic groups.

308. The incarceration rate for Blacks is 7.66 times that for Whites and approximately 4 times their proportion in society at large. While Blacks make up approximately 12.5 per cent of the U.S. population, in 1997 approximately 47 per cent of state prison inmates were non-Hispanic Blacks. While approximately 11.5 per cent of the U.S. population is Hispanic, 16 per cent of the state prison population is Hispanic. As of 31 December 1998, 57.8 per cent of the total federal inmate population was White (including White Hispanics), 38.9 per cent Black, 1.7 per cent Asian/Pacific Islander, and 1.6 per cent Native American. Additionally, 30.3 per cent of federal prisoners were identified as Hispanic (who can be of any race, though the overwhelming majority of Hispanics in the U.S. are classified as White for racial purposes). The reasons for these disparities are complex and disputed.

309. Disparities in sentencing. In recent years, there has been increased focus on the issue of racial disparities in sentencing at the state and federal levels. Some studies suggest that the national "war on drugs" has further exacerbated existing disparities in sentencing within the federal and state criminal justice systems. Within the federal system, concern has been raised, in particular, in relation to (a) the use of mandatory minimum sentences generally; and (b) the disparity in mandatory minimum sentences between "crack" and "powder" cocaine.

310. In 1984, after more than two decades of debate and study, Congress enacted a substantial reform of federal sentencing, the Sentencing Reform Act. The central features of that legislation included a comprehensive statement of federal sentencing laws; appellate review of sentences; abolition of parole; and the creation of the U.S. Sentencing Commission to develop a detailed system of guidelines that would structure and direct the previously unfettered sentencing discretion of federal judges. Congress established the Sentencing Commission as an independent, permanent agency in the judicial branch of government. The Commission's mandate was to develop guidelines for federal criminal offences that would bring greater certainty, honesty, and uniformity to sentencing, ensure just punishment, and promote crime control. One of the important goals of this reform was to reduce unwarranted sentence disparity.

311. At the same time the Sentencing Commission was developing, promulgating, and amending guidelines, Congress enacted a number of mandatory minimum penalty statutes, largely for drug and weapons offences and for recidivist offenders. There has been much debate in the United States about the fairness and efficacy of the mandatory minimum sentencing scheme. Some commentators argue that the imposition of this "mandatory minimum" scheme unduly restricts the ability of federal judges to impose sentences that are particular to the defendant's case and promotes racial disparities in sentencing and incarceration, while others support it as necessary to ensure appropriate levels of punishment for serious offences.

312. As noted above, in mandating minimum terms of imprisonment, one of Congress's goals was to eliminate unwarranted sentencing disparity for certain categories of defendants. To accomplish this, Congress identified these categories and designated appropriate penalties below which defendants were not to be sentenced. However, a recent report by the Sentencing Commission found that approximately 40 per cent of defendants determined to exhibit behaviour

warranting mandatory minimum terms were sentenced below those indicated terms. Also, the Commission's study concluded that a greater proportion of Black defendants received sentences at or above the indicated mandatory minimum (67 per cent), followed by Hispanics (57.1 per cent) and Whites (54.0 per cent).

313. The U.S. Justice Department has worked vigorously to ensure that neither racial nor ethnic nor other improper discrimination occurs within the criminal justice system that might lead to racial disparities in sentencing and corrections. With respect to the federal criminal justice system in particular, the U.S. Deputy Attorney-General has convened an internal Justice Department working group to examine racial disparities in the federal system, including questionable disparities in sentencing policies.

314. Mandatory minimum sentences have generated extensive litigation at the state and federal level, especially in recent years as Congress and state legislatures have increased the severity of mandatory penalties for drug and firearm offences. Among the principal challenges to mandatory minimum provisions are contentions that they offend the Eighth Amendment's prohibition against cruel and unusual punishment and the Due Process Clause of the Fifth and Fourteenth Amendments. Criminal defendants have also challenged mandatory minimum sentencing schemes on equal protection, double jeopardy, and separation of powers grounds. Generally, these challenges have not succeeded.

315. Among the mandatory minimum penalties enacted by Congress in the late 1980s were those related to sentencing for federal cocaine offences. In establishing these mandatory minimum penalties, Congress differentiated between two forms of cocaine - powder and crack (the commonly consumed form of cocaine base). Under current federal law, it takes 100 times as much powder cocaine as crack cocaine to trigger the same mandatory minimum penalty. Thus, a person convicted of selling 500 grams of powder cocaine is subject to the same five-year mandatory minimum sentence as a person selling 5 grams of crack cocaine. This so-called "100-to-1 ratio" (5 grams/500 grams) between crack and powder cocaine sentencing has been widely criticized - in a recent report by the Leadership Conference for Civil Rights, by both Republicans and Democrats in Congress, and elsewhere - as unfair and unjustified. Concern in this area is heightened in light of the fact nearly 90 per cent of the offenders convicted in federal court for crack cocaine distribution are African-American while the majority of crack cocaine users are White.

316. In September 1994, the United States Sentencing Commission was directed to study and report to Congress on the 100-to-1 cocaine sentencing ratio. In 1995, the Commission issued a report criticizing the law and subsequently sent to Congress a recommendation to equalize the penalties for crack and powder at the lower, powder cocaine sentencing levels. The recommendation was accompanied by a proposed change in the federal sentencing guidelines that would have, for the purposes of the sentencing guidelines, equalized the penalties for crack and powder cocaine offences. Because of concern about the devastating and disproportionate impact that crack cocaine trafficking was having on inner city communities, the Clinton Administration urged Congress to reject the recommendation of the Sentencing Commission. Congress agreed and invalidated the proposed new sentencing guideline. The legislation that rejected the proposed guideline also directed the Sentencing Commission to develop a second recommendation that would reduce but not eliminate the existing sentencing disparity.

317. In 1997, the Sentencing Commission issued a second report that again criticized current law and that recommended reducing the disparity between crack and powder cocaine sentencing policy. After an extensive study of the Commission's reports and recommendations, the Administration took the position that the 100-to-1 ratio should be changed; that existing law inappropriately targets lower-level crack offenders with significant mandatory minimum sentences and that such sentences fall disproportionately on African-Americans. The Administration proposed revising federal cocaine sentencing policy so that a conviction for distributing 25 grams (rather than 5 grams) of crack cocaine or 250 grams (rather than 500 grams) of powder cocaine would trigger the five-year mandatory minimum prison sentence.

318. Others have suggested different solutions. Some have suggested equalizing penalties by raising powder cocaine penalties to the current level for crack (i.e., 5 grams = 5 years) or by reducing crack cocaine penalties as first suggested by the U.S. Sentencing Commission. However, to date, only one proposal has been the subject of legislative action. A proposal by Senator Spencer Abraham of Michigan to reduce the disparity between crack and powder cocaine sentencing by increasing the penalties for powder offences was approved by the Senate earlier this year.

319. Capital punishment. The U.S. Supreme Court has held that the U.S. Constitution does not prohibit capital punishment, so long as adequate substantive and procedural protections are in place (Gregg v. Georgia, 428 U.S. 153 (1976)). Accordingly, each state may decide whether to authorize the death penalty, so long as their statutes meet the constitutional standard set out in Gregg and subsequent cases. At the end of 1998, 38 of the 50 states and the Federal Government provided for capital punishment. Capital punishment is currently not provided for in Alaska, Hawaii, Iowa, Maine, Massachusetts, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin and the District of Columbia.

320. A sentence of capital punishment can be sought and imposed only for the most egregious crimes. In the first instance, these crimes, and the applicable procedures, must be specified by the legislature in an appropriate statute. That statute is subject to judicial review for compliance with the constitutional guarantees of due process, equal protection, and protection against cruel and unusual punishment. In 1972, the Supreme Court set aside sentences of death imposed under Texas and Georgia statutes holding that the imposition of death in the cases at issue constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution (Furman v. Georgia, 408 U.S. 238 (1972)). Subsequently, the states and the Federal Government revised their capital punishment statutes to meet the substantive and procedural criteria required by the Court's analysis. In 1976, in upholding such a revised statute in Gregg, the U.S. Supreme Court effectively ended a four-year moratorium on the imposition of death sentences. Nonetheless, judicial challenges to sentences and statutes remain commonplace.

321. Generally, the death penalty cannot be imposed unless a serious crime resulted in the death of the victim (Coker v. Georgia, 433 U.S. 584 (1977); Enmund v. Florida, 458 U.S. 782 (1982); Eberheart v. Georgia, 433 U.S. 917 (1977)). Moreover, the fact that the crime resulted in death is not sufficient to trigger the sanction of capital punishment; the crime must also have attendant aggravating circumstances. These restrictions upon the imposition of the death penalty

arise out of the constitutional requirement that the punishment not be disproportionate to the personal culpability of the wrongdoer (Tison v. Arizona, 481 U.S. 137 (1987)) and the severity of the offence (Coker v. Georgia, 433 U.S. 584 (1977)).

322. The public debate over capital punishment in the United States includes claims about the incidence of racial and ethnic bias and discrimination. Blacks are disproportionately more likely to be sentenced to death and executed than other racial or ethnic groups. From 1977 (the year after the Supreme Court upheld the constitutionality of revised State capital punishment laws) to 1998, a total of 5,709 persons entered prison under a sentence of death. During this period, the U.S. general population was approximately 10-12 per cent Black; however, among those entering prison under a death sentence during this period, 2,347 (41 per cent) were Black. Of the 500 persons executed during these 22 years, 178 (36 per cent) were Black.

323. As of the end of 1998, 3,452 prisoners were under sentence of death in the state or federal systems. California held the largest number on death row (512), followed by Texas (451), Florida (372), and Pennsylvania (224). Nineteen prisoners were under a federal sentence of death. During 1998, 30 states and the federal prison system received 285 prisoners under sentence of death. Of the 285 new admissions, 132 (46 per cent) were Black and 38 (13 per cent) were Hispanic. During 1998, 66 men and two women were executed. Of those executed, 40 (60 per cent) were White; 18 (27 per cent) were Black; 8 (12 per cent) were Hispanic; 1 was American Indian and 1 was Asian.

324. In McClesky v. Kemp, 481 U.S. 279 (1987), the U.S. Supreme Court considered the implications of a study indicating that the death penalty in Georgia was imposed more often on Black defendants and killers of White victims than on White defendants and killers of Black victims. The Supreme Court held that this study failed to establish that any of decision makers in the defendant's case acted with discriminatory purpose in violation of the Equal Protection Clause. The Court further held that, at most, the study indicated a discrepancy that appeared to correlate with race, not a constitutionally significant risk of racial bias affecting Georgia's capital-sentencing process; therefore, it did not establish a violation of the Eighth Amendment's prohibition against cruel and unusual punishment.

325. While capital punishment continues to be supported by a majority of the citizens in a majority of states in the United States, a significant number do not support it. Some opponents believe capital punishment is not only unfairly applied but also ineffective as a deterrent to criminal activity. Throughout the country, many remain concerned about racial and geographic disparities in the application of the death sentence. Other stated causes for concern include: inadequate representation of counsel, lack of a fair hearing at which exculpatory evidence can be submitted, and the unavailability of exonerating evidence until long after the trial. Despite these concerns, the U.S. Government remains confident that the death penalty is imposed only in the most egregious cases and only in the context of the heightened procedural safeguards required by our state and federal constitutions and statutes.

326. Security of person. Under article 5 (b) the State party must provide equal protection against violence and bodily harm, whether inflicted by governmental officials or by individuals, groups or institutions.

327. As discussed above, U.S. law prohibits discrimination on the basis of race, colour, ethnicity or national origin. Notably, the Fifth and Fourteenth Amendments to the U.S. Constitution guarantee equal protection of the laws to all persons. This guarantee extends to equal protection against violence and bodily harm. Moreover, several statutes have been enacted at both the state and federal level which create criminal and civil liability for violence or threats of violence on the basis of race, colour, ethnicity or national origin. See, e.g., Violent Crime Control and Law Enforcement Act of 1994; Civil Rights Act of 1968.

328. U.S. law has long provided criminal penalties for certain violations of civil rights, including particular acts of violence motivated by racism. See, e.g., 18 U.S.C. sec. 245 (b) (2); 18 U.S.C. sec. 247 (c); 42 U.S.C. sec. 3631. Federal "hate crimes" law prohibits any person from using force or wilful threats to injure, intimidate, or interfere with, or attempt to injure, intimidate or interfere with any person because of his or her race, colour, religion, or national origin and because he or she is engaging in certain federally protected rights, including rights related to education, employment and the use of public facilities and establishments which serve the public. In some instances, harsher penalties have been available when ordinary crimes are committed with racist intent. In addition, many states also protect equal rights to security of person through state hate crime laws.

329. Prisons. Title 28, C.F.R. Part 551.90 provides that federal inmates "may not be discriminated against on the basis of race, religion, nationality, sex, disability, or political belief. Each warden shall ensure that administrative decisions and work, housing, and programme assignments are non-discriminatory." In addition, the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. sec. 1997 et seq., gives the Department of Justice jurisdiction to investigate institutional conditions and to sue state and local governments for a pattern or practice of egregious or flagrant unlawful conditions. Since CRIPA was enacted, the Civil Rights Division has investigated more than 300 facilities in 39 states, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories of Guam and the U.S. Virgin Islands. As a result of the Department of Justice's CRIPA efforts, tens of thousands of institutionalized persons who were living in dire, often life-threatening conditions now receive adequate care and services. Additionally, the Department of Justice has obtained orders prohibiting the segregation of prisoners by race.

330. Federal Bureau of Prisons staff receive diversity management training during the Introduction to Correctional Techniques at the Federal Law Enforcement Training Center which is required for all new primary law enforcement employees. Diversity management principles are again emphasized during annual refresher training, which is required for all employees. Finally, a large number of national Bureau training seminars also have a session on diversity management.

331. The Bureau of Prisons maintains two separate databases of discrimination complaints filed by inmates. Inmates may seek formal review of an issue which relates to virtually any aspect of their confinement, if informal procedures have not resolved the matter. See 28 C.F.R. Part 542, Administrative Remedy. This programme applies to all inmates confined in institutions operated by the Bureau of Prisons, inmates designated to contract Community Corrections Centers under Bureau of Prisons responsibility, and former inmates for issues that arose during their confinement.

332. Inmates must first attempt informal resolution of grievances before filing a formal request for administrative remedy. The initial request is filed at the institution level. If the inmate is not satisfied with the warden's response, he or she may appeal to the Regional Office. If the inmate is not satisfied with the Regional Director's response, he or she may file a Central Office Administrative Remedy Appeal. After receiving the response from the Administrator, National Inmate Appeals, the inmate has exhausted the Bureau's administrative remedy programme.

333. The records regarding allegations of discrimination in the administrative remedy programme, however, do not distinguish between the various forms of discrimination. Thus, the general category of "discrimination" includes allegations of racial or ethnic discrimination, as well as discrimination based on gender, disability, religious belief, or national origin. Accordingly, it is not possible to provide statistics specifically on the number of allegations regarding racial or ethnic discrimination.

334. The second database that the Bureau of Prisons uses to monitor complaints is through the Office of Internal Affairs. All allegations of staff misconduct are required to be referred to the Bureau of Prisons Office of Internal Affairs which has the responsibility within the Bureau to ensure that allegations and appearances of staff misconduct and impropriety, including criminal matters, are reported to the U.S. Department of Justice Office of the Inspector General. The Inspector General has the authority to investigate serious incidents itself or defer the case to the Bureau of Prisons for an administrative investigation. The Inspector General may also refer criminal matters, e.g., physical or sexual abuse of an inmate, to the Department of Justice Civil Rights Division for prosecutorial consideration under applicable statutes.

335. Political rights. As required by article 5 (c), U.S. law guarantees the right to participate equally in elections, to vote and stand for election on the basis of universal and equal suffrage, to take part in the government as well as in the conduct of public affairs, and to have equal access to public service.

336. These guarantees arose in the mid-1960s in response to the continued discrimination against Blacks in the electoral process despite the ratification in 1870 of the Fifteenth Amendment, which was intended to protect the right to vote from denial or abridgement on account of race, colour, or previous condition of servitude. With the enactment of the Voting Rights Act of 1965, the political process started to become open to Blacks. As interpreted, this statute also reaches discrimination on the basis of ethnic or national origin. It also requires that bilingual voting information be made available where more than 5 per cent of the population or 10,000 individuals within a jurisdiction speak a language other than English. The statute was amended in 1982 to prohibit practices that result in the denial or abridgement of the right to vote.

337. The Department of Justice is responsible, along with private plaintiffs, for the enforcement of the Voting Rights Act. The Department brings suits in federal court under Section 2 of the Act to challenge voting practices or procedures that have the purpose or effect of denying equal opportunity to minority voters to elect their candidates of choice.

338. By operation of Section 5 of the Voting Rights Act, any change with respect to voting that occurs in a specially covered jurisdiction (applies to nine states in their entirety and to parts of seven additional states) must obtain federal pre-approval before it can be put into effect. The federal review is designed to ensure that the voting change in question will not have the purpose or effect of making minority voters worse off. The Civil Rights Division reviews approximately 20,000 voting changes per year. In recent years, the Attorney-General has blocked implementation of a wide variety of discriminatory changes, including annexations and at-large election systems that dilute minority voting strength, discriminatory local and statewide redistricting plans, discriminatory redistricting guidelines, and discriminatory voter assistance procedures.

339. In recent years, the Supreme Court has recognized a new cause of action that permits White voters to challenge redistricting plans enacted by state or local governments as unconstitutional. This cause of action requires that if a state or local government uses race as the "predominant factor" in redistricting, that use will be subject to strict judicial scrutiny. Under that standard, the action will only be upheld if there is compelling governmental interest in the use of race and if the use is narrowly tailored to meet that interest.

340. As of 1 August 2000, of the total 1,218 judges on the federal bench, 106 were Black (8.7 per cent), 51 were Hispanic (4.2 per cent), and three were Native American (0.2 per cent). Of the nine justices on the U.S. Supreme Court, one is of a racial minority (Black). Of the 159 judges on the U.S. Courts of Appeal, 10 are Black (6.3 per cent), 10 are Hispanic (6.3 per cent), 2 are Native American (0.6 per cent), and 1 is Asian (0.6 per cent).

341. According to the Directory of Minority Judges of the United States published by the American Bar Association, of the approximately 60,000 state court judges, 3,610 are of racial minorities (approximately 6 per cent). Of this number, 1,680 are Black, 1,310 are Hispanic, 254 are Asian, and 42 are Native American.

342. With respect to the 535 members of the 106th Congress, 37 are Black (6.9 per cent), 18 are Hispanic (3.4 per cent), three are Asian (0.6 per cent), and one is Native American (0.2 per cent). Of the 50 state governors, only two are of racial minorities - both are Asian. Finally, of the mayors of the 25 largest cities in the United States, eight are Black (32 per cent) and two are Hispanic (8 per cent).

343. In 1992 the Census Bureau collected data regarding minority participation in local elected office through the 1992 Census of Governments. The census collected data regarding general purpose government officials (e.g., municipal mayors and city councillors) and special purpose government officials (e.g., school board members). Among the 419,761 officials for whom race or Hispanic origin was reported, 405, 905 were White (96.7 per cent); 11,542 were Black (2.7 per cent); 1,800 were American Indian, Eskimo and Aleut (0.4 per cent); and 514 were Asian or Pacific Islander (0.1 per cent). There were 5,859 local elected officials who identified themselves as Hispanic (1.4 per cent). This data reflected a notable increase in minority representation since the last time the Census of Governments was conducted in 1987.

344. Other civil rights. Article 5 (d) obliges States parties to ensure equality of enjoyment of a number of human rights and fundamental freedoms, including freedom of movement and residence, the right to leave one's country and return, the right to a nationality, the right to marriage and choice of spouse, the right to own property alone as well as in association with others, the right to inherit, the right to freedom of thought, conscience and religion, the right to freedom of opinion and expression, the right to freedom of peaceful assembly and association.

345. These rights are guaranteed to all persons in the United States in accordance with various Constitutional and statutory provisions. The right to freedom of movement and residence in the United States is guaranteed to all citizens by the "right to travel" (Crandall v. Nevada, 73 U.S. 35 (1868)). The right of a citizen to enter and leave the United States is recognized by law. The right to marriage and choice of a spouse is one of the "fundamental rights" protected by the privacy provisions of the U.S. Constitution (Zablocki v. Redhail, 434 U.S. 374 (1978); Loving v. Virginia, 388 U.S. 1 (1967)). The right to non-discrimination in the ownership of property is protected by the Fifth and Fourteenth Amendments to the Constitution. See 42 U.S.C. sec. 1982; Shelly v. Kramer, 334 U.S. 1 (1948) (finding state action in the state court's enforcement of racially restrictive covenants unconstitutional). Freedom of thought, conscience, religion, opinion, expression and assembly are protected by the First Amendment. One of the purposes of the Fourteenth Amendment to the U.S. Constitution was to protect these ordinary rights of citizens against encroachment by state and local governments. These "privileges and immunities" of national citizenship cannot be abridged by state or local legislation.

346. Specific intent to interfere with these rights may be criminally prosecutable under a number of statutes. See, e.g., 18 U.S.C. sec. 241 (for conspiracy to deprive persons of such rights), 242 (for deprivation of rights under "colour of law"), 245 (for violence or threatened interference with specified federal rights motivated in part by racial animus), 247 (for violent or threatening interference with right to exercise one's religious beliefs), and 42 U.S.C. sec. 3631 (for violent or threatening interference with rights to own or occupy property and to associate therein with persons of another race).

347. Economic, social and cultural rights. Article 5 (e) (i) guarantees equality and non-discrimination with regard to the right to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, and to just and favourable remuneration. As a matter of law and regulation, this obligation is met; in practice, however, significant disparities continue. The sources or causes of socio-economic differences are complex and depend on a combination of societal conditions, such as the state of the national and local economies, continued racial and ethnic discrimination in education and employment, and individual characteristics, such as educational background, occupational experiences, and family background.

348. Although some narrowing of economic status among various racial and ethnic groups has occurred in recent years, substantial gaps persist. For example, in 1998 the median incomes of White non-Hispanic households and of Asian and Pacific Islander households ($42,400 and $46,600, respectively) were much higher than those of Black and Hispanic households ($25,400 and $28,300, respectively). By one 1993 measure, the median wealth (net worth) of White households was nearly 10 times that of Black and Hispanic households. In 1998, the poverty rate among Blacks (26.1 per cent) was more than triple the poverty rate of White non-Hispanics

(8.2 per cent). The poverty rate among Hispanics (25.6 per cent) was not statistically different from that of Blacks. According to data from the 1990 decennial census, the poverty rate for American Indians, Eskimos and Aleuts was 30.9 per cent in 1989. In the same year, the poverty rate was 9.8 per cent for Whites, 29.5 per cent for Blacks, and 14.1 per cent for Asians and Pacific Islanders.

349. The pervasiveness of child poverty is of particular concern. Since 1993, poverty rates for children under 18 years within the United States have fallen, but differences among racial and ethnic groups remain high. Between 1993 and 1998, the poverty rate for White children fell 2.7 per cent age points to 15.1 per cent. The rate for Black children fell even more, from 46.1 per cent to 36.7 per cent, but was still twice as high as the rate for White children. The rate for Hispanic children fell from 40.9 per cent in 1993 to 34.4 per cent in 1998, but was not statistically different from the rate for Black children in 1998. By comparison, the rate for Asian and Pacific Islander children in 1998 was 18.0 per cent, not statistically different from the rate for White children, and the same as in 1993 (18.2 per cent).

350. In 1989, the poverty rate for American Indian, Eskimo and Aleut children was 38.3 per cent.[6] In the same year, the poverty rate was 12.1 per cent for White children, 39.5 per cent for Black children, and 16.7 per cent for Asian and Pacific Islander children.

351. Although there has been an unmistakable increase in inequality both overall and among racial and economic groups in the United States since the mid-1970s, some trends indicate movement toward greater economic equality. As a result of fiscal discipline, investments in the American people, and increased trade, the United States is in the midst of the longest economic expansion in its history. The unemployment rate for Blacks has fallen from an average of 14.2 per cent in 1992 to an average of 7.7 per cent in 2000 - the lowest rate on record. Since 1993, the poverty rate for Blacks has dropped from 33.1 per cent to 26.1 per cent in 1998 - another record low. Also, the unemployment rate for Hispanics has dropped from an average of 11.6 per cent in 1992 to an average of 5.8 per cent in 2000; and the poverty rate for Hispanics as fallen to 25.6 per cent, the lowest since 1979.

352. With regard to other social and cultural rights, as the percentage of immigrants living in the United States has increased in recent years, larger numbers of individuals primarily speak languages other than English. While the number of individuals who speak or understand English and another language is also increasing, this diversity in languages has been met with calls for official language policies or legislation that requires that only English be spoken in the workplace. The present administration has taken the position that an "Official English" law would effectively exclude Americans who are not fully proficient in English from employment, voting, and equal participation in society and be subject to serious constitutional challenge. (Statement of Administration Policy, H.R. 123, 104th Congress).

353. Employment discrimination. Improvements in economic conditions have recently reduced the national unemployment rate to its lowest level in 30 years. According to the Bureau of Labor Statistics, the unemployment rate for Black Americans was 8.0 per cent in 1999, compared to a national rate of 4.2 per cent. Both figures have declined from the previous year (the national rate was 4.5 per cent in 1998, the rate for Blacks was 8.9 per cent). By comparison,

the estimated unemployment rate for Hispanics in 1999 was 6.4 per cent. The highest rate of unemployment is found among Native Americans on reservations (in some cases over 50 per cent).

354. Despite strong legal protections safeguarding the right to free choice of employment and to just and fair conditions of employment, the exclusion of people from employment opportunities on racial and ethnic grounds remains a significant problem in the United States. Besides hiring, discrimination persists in the areas of training, promotion, tenure, layoff policies, and the work environment. Approximately 80,000 complaints of employment discrimination are filed annually with the EEOC; an additional 60,000 discrimination complaints are filed with state fair employment practices agencies. In recent years, the Government has settled numerous cases involving allegations of racial discrimination in employment.

355. Some recent examples of EEOC cases that have resulted in significant settlements for plaintiffs are:

(a) A $1.25 million settlement of a class action lawsuit against American Seafoods Company, a Seattle-based, major participant in the U.S. fishing industry. The suit charged the employer with subjecting 18 Vietnamese-American workers to discriminatory working conditions based on their national origin;

(b) A $2.1 million settlement of a class employment discrimination lawsuit against Woodbine Healthcare Center, a nursing home in Missouri. The suit alleged that the employer discriminated against 62 Filipino registered nurses in wages, assignments, and other terms and conditions of employment based on national origin;

(c) A consent decree settling a lawsuit against American National Can Company. The suit alleged that the employer subjected Black employees to racial harassment, including racially offensive graffiti, name-calling and jokes. The employer is providing $275,000 to a class of 90 employees and is establishing a $100,000 Partnership Training Program, designed to improve employee relations and help employees enhance their problem solving skills.

356. The Department of Labor promotes quality workplaces that are free of discrimination through a multi-faceted strategy that includes civil rights enforcement, public education and communication, and strategic partnerships and cooperation. The Department of Labor enforces laws that ban discrimination by federal contractors and subcontractors in all aspects of employment, including compensation. The laws also require that federal contractors take pro-active steps to ensure that all individuals have equal employment opportunities. These laws help prevent pay discrimination by requiring contractors to conduct self-audits, which may bring to light otherwise unrecognized pay inequities.

357. Protection of foreign workers, especially migrants, seasonal and transient workers. In April 1998, the Attorney-General announced the creation of an inter-agency Worker Exploitation Task Force, co-chaired by the Assistant Attorney-General for Civil Rights at the Department of Justice and the Solicitor of the Department of Labor. Using existing federal criminal laws, including 18 U.S.C. sec. 1584 (Involuntary Servitude), sec. 1581 (Peonage), sec. 894 (Extortionate Collection of Debt), sec. 1951 (Extortionate Interference with Commerce), and

several other statutes governing labour practices, smuggling and related offences, the Task Force coordinates the investigation and prosecution of worker exploitation cases throughout the United States. These cases often involve the recruitment and smuggling of foreign nationals into the United States for forced labour and prostitution, and the exploitation of migrant farm workers, sweatshop labourers and other workers. The Task Force also promotes outreach and public education on the subject to increase awareness. Some examples of recent cases include:

358. In United States v. Miguel Flores, et al. (D. S.C. 1997), four defendants were successfully prosecuted for smuggling farm labourers into South Carolina and Florida from Guatemala and Mexico and exploiting them through the use of fear and intimidation. While working in labour camps, the victim workers were threatened, subjected to occasional beatings, and told that if they attempted to leave before paying off their smuggling fees they would be killed.

359. In United States v. Carrie Mae Bonds, et al. (E.D. N.C. 1993), Black homeless men in Atlanta were recruited by the defendant, a farm labour contractor, to work as migrant farm labourers in North and South Carolina. When the victims arrived at the labour camps they were told that they were already indebted to the defendant for their transportation and meals. The workers were also held at gunpoint and told that they could not leave the camps. The matter was resolved through a successful prosecution by the Department of Justice.

360. The Civil Rights Division of the Department of Justice was involved in the successful prosecution of eight Thai nationals who enticed citizens from Thailand to travel to the United States by promising the victims high wages, good hours and freedom. Upon arrival in the United States, the Thai labourers were transported to a work compound where they were confined and forced to work up to 20 hours at a time. The victims were housed in an apartment complex in El Monte, California, surrounded by razor wire and spiked fences and guarded by full-time guards. Threats were used against the victims and their families to force the workers to remain in the El Monte compound.

361. News reports of an extensive, multi-state slavery ring of Mexican nationals who were both deaf and unable to speak resulted in charges brought by the United States against 20 defendants for recruiting and smuggling approximately 60 Mexican nationals to the United States with the promises of good jobs and for the purposes of exploiting and abusing them for profit. The Mexican nationals were forced to work under conditions of servitude peddling key chain trinkets on the streets and subways of New York City. All of the defendants pleaded guilty.

362. The Department of Justice's Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) is the only office in the Federal Government whose sole mission is to protect against workplace discrimination associated with citizenship status. OSC investigates allegations of national origin discrimination involving small employers (defined as having fewer than 15 employees). OSC vigorously investigates and prosecutes charges of discrimination to ensure that legally authorized workers, often immigrants and refugees, are not discriminated against by employers. OSC works in partnership with state, local and federal civil rights enforcement agencies and with non-governmental entities around the nation to educate workers, employers and the general public about their rights and responsibilities under the immigration laws. It has obtained almost $2 million in back pay for victimized workers and fined violators

over $1.4 million since 1987. OSC has obtained relief, for example, for a United States citizen who was denied the opportunity to apply for a clerk-typist position at a New York City law firm because of her Spanish accent; for a native-born Hispanic U.S. citizen poultry plant worker in Arkansas, who was denied a job because the employer thought she was not a U.S. citizen because she spoke Spanish and had received medical treatment in Mexico; for immigrant workers retaliated against by their employers for filing unfair employment practice charges; and for a Puerto Rican woman who was asked to show her green card to obtain a job at a New York manufacturing company despite the fact that Puerto Ricans are U.S. citizens at birth. OSC cases have been brought successfully against Fortune 100 companies as well as small employers in all industries, including the airline, apparel, agriculture, food and restaurant industries, and high-skilled professions.

363. The United Nations and some human rights advocates have raised concerns about enforcement of federal laws against unauthorized migrants entering the United States. In particular, some argue that increased enforcement efforts along traditional border-crossing routes at the U.S.-Mexico border have resulted in illegal crossing attempts at more dangerous points. This, they allege, has resulted in increased injury and fatalities at the southern border of the United States. In an effort to reduce migrant deaths and make the border safer for migrants, the Immigration and Naturalization Service (INS), in conjunction with the Government of Mexico, implemented the Border Safety Initiative in June 1998. Through deploying more agents and mobile units at the most hazardous crossing points, providing agents with safety equipment and training, deploying search and rescue teams, and expanding public outreach programmes, the INS has significantly enhanced border safety.

364. Other complaints have focused upon the high percentage of removals of individuals to Mexico as compared to the home countries of other individuals who enter the United States illegally or overstay their visas. Also, detention conditions and mandatory detention policies enacted in 1996 have been the focus of concerns.

365. Unions. U.S. law guarantees all persons equal rights to form and join trade unions, as required by article 5 (e) (ii). A private sector union, which is the exclusive bargaining representative under the National Labor Relations Act (NLRA), 29 U.S.C. sec. 151, has the responsibility to fairly represent each of the employees for whom it is the bargaining agent. Although unions have broad bargaining discretion, they must exercise that discretion fairly and in good faith. Unions are not barred from making contracts that negatively affect a segment of the bargaining unit, but they are prohibited from making discriminatory contracts based on irrelevant or invidious considerations (such as race or ethnicity). Similar protections are provided to railway and airline employees under the Railway Labor Act, 29 U.S.C. sec. 152, and to federal employees under the Civil Service Reform Act of 1978, 5 U.S.C. sec. 7101.

366. Enforcement of the NLRA's prohibitions is entrusted to the National Labor Relations Board, its independent General Counsel, private employees, and the judicial system. Enforcement of the Railway Labor Act is provided by arbitration through the National Mediation Board. Under the Civil Service Reform Act, hearings are held by the Federal Labor Relations Authority and appeals of its decisions are made directly to the Federal appellate courts (5 U.S.C. sec. 7123).

367. Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination on the basis of race, colour, sex, religion, or national origin, also covers workers within their unions. Enforcement of Title VII is by private individuals and or by the Federal Equal Employment Opportunity Commission.

368. Housing. Both federal and state laws guarantee equal rights to housing, as mandated by article 5 (e) (iii), and they prohibit discriminatory practices in the sale and rental of housing as well as in the mortgage lending and insurance markets related to housing. The Departments of Justice and Housing and Urban Development have vigorously prosecuted violations of the federal civil rights statutes in an effort to reduce housing discrimination.

369. The Fair Housing Act, originally enacted as Title VIII of the Civil Rights Act of 1968 and amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. sec. 3601-19) prohibits discrimination on the grounds of race, colour, religion, or national origin in the sale or rental of housing, as well as in other real estate related transactions (i.e., lending, insurance, and appraisal practices), with some limited exceptions. The Act also includes a criminal provision, 42 U.S.C. sec. 3631, which, as discussed in more detail above, is used to prosecute cross-burnings and other racially-motivated threats and violence directed at people in their homes.

370. The Fair Housing Act applies not only to actions by direct providers such as landlords and real estate companies, but also to actions by municipalities, banks, insurance companies, and other entities whose discriminatory practices make housing unavailable to persons because of their race, colour, religion, sex, national origin, disability, or familial status. In addition, the Equal Credit Opportunity Act, 15 U.S.C. sec. 1691, prohibits creditors from discriminating against any applicant for credit on the basis of race, colour, religion, national origin, sex or marital status, or age. This extends to mortgage applications, and therefore protects minority applicants from being discriminated against in the purchase of homes. This statute is enforced through litigation initiated by private parties and by the Federal Government.

371. The Department of Justice actively enforces laws against discrimination in housing. Most recently, in 1999, the Justice Department resolved a case, Unites States v. Vernon, against an apartment complex for refusing to rent apartments in Albuquerque, New Mexico to Blacks. The case was resolved by a consent decree that required the owner to pay monetary damages to victims of the discrimination. Similar settlements were reached in cases brought against landlords in Richmond, Virginia and Jackson, Mississippi.

372. In United States v. Big D Enterprises, the Department successfully tried a case against an Arkansas landlord who discriminated against African American apartment-seekers. The court's decision awarding compensatory and punitive damages was affirmed on appeal.

373. In United States v. Boston Housing Authority, the Department alleged that the landlord was responsible for failing to respond to and take corrective actions to protect Black and Hispanic families who were subjected to racial and ethnic harassment from other tenants, including racial and ethnic epithets, threats, graffiti, vandalism, and assaults. The case was settled with an agreement for the landlord to pay damages to the victims and institute corrective policies and procedures to prevent future problems.

374. Also, in a case alleging discrimination in lending, the Department of Justice brought an enforcement action against a bank in Jackson, Mississippi, alleging race discrimination. The complaint alleged that the bank, Deposit Guaranty, used different underwriting criteria for Black applicants than for White applicants. As a result, Black applicants for credit were three times more likely to be rejected than similarly situated White applicants. The case was resolved and the bank was required to pay $3 million in monetary damages and to institute uniform and centralized policies and procedures. Enforcement actions have been brought on behalf of Blacks, Native Americans, Hispanics and others throughout the United States.

375. In 2000, the Department of Justice, along with the Federal Trade Commission and HUD, filed and settled a suit in United States v. Delta Funding Corporation, alleging violations of fair housing, fair lending, and consumer protection laws in making its loans. This lawsuit marks the first such combined action was taken by the federal agencies. The complaint alleged that Delta, which made loans with the assistance of mortgage brokers, violated the Fair Housing and Equal Credit Opportunity Acts by granting home mortgage loans with higher broker fees to African American females than those provided to white males, that it violated the Real Estate Settlement Practices Act by allowing unreasonable broker fees, and that it violated the Home Ownership and Equity Protection Act by engaging in asset-based lending. The settlement provides for injunctive and monetary relief.

376. Health and health care. Although the U.S. health care system provides the finest overall care in the world, the data show significant disparities with regard to certain health measures. For example:

- Infant mortality rates are 2.5 times higher for Blacks than for Whites, and 1.5 times higher for Native Americans. In 1997, the infant mortality rates for Whites was 6.0 deaths per 1,000 live births, compared to 13.7 deaths per 1,000 live births for Blacks;

- Black men under age 65 have prostate cancer at nearly twice the rate of White men;

- The death rate from heart disease for Blacks is 41 per cent higher than for Whites (147 deaths per 100,000, compared with 105 deaths);

- Diabetes is twice as likely to affect Hispanics and Native Americans as the general population. Diabetes rates are 70 per cent higher for Blacks than for Whites;

- Black children are three times more likely than White children to be hospitalized for asthma;

- The maternal mortality rate for Hispanic women is 23 per cent higher than the rate for non-Hispanic women. Black women have a 5 per cent higher death rate in childbirth than non-Hispanic White women;

- Blacks experience disproportionately high mortality rates from certain causes, including heart disease and stroke, homicide and accidents, cancer, infant mortality, cirrhosis and diabetes;

- Native Americans are 579 per cent more likely to die from alcoholism, 475 per cent more likely to die from tuberculosis and 231 per cent more likely to die from diabetes than Americans as a whole;

- Individuals from minority racial and ethnic groups account for more than 50 per cent of all AIDS cases, although they represent only 25 per cent of the U.S. population;

- The rate of AIDS cases was 30.2 per 100,000 for Whites in 1993. It fell to 9.9 in 1998. The rate for Blacks in 1993 was 162.2; 84.7 in 1998. The rate for Hispanics fell from 89.5 in 1993 to 37.8 in 1998.

377. Health care professionals. In 1996, about 740,000 medical doctors practised in the United States (280 per 100,000 population). Minorities are likely to live in areas under-served by these and other medical professionals. Poor urban communities with high proportions of Blacks and Hispanics averaged only 24 physicians per 100,000. Poor communities with low proportions of Blacks and Hispanics averaged 69 doctors. This shortage is exacerbated by data that show Black physicians are five times more likely than other doctors to treat Black patients, and Hispanic doctors are 2.5 times more likely than other doctors to treat Hispanic patients. Minority doctors are also more likely to treat Medicaid or uninsured patients than White doctors from the same area.

378. Health care facilities. There are about 6,200 hospitals in the United States providing more than one million beds. Before the 1960s, hospitals were voluntary organizations and did not face the same legal requirements as public institutions. In addition, hospital medical staffs were self-governing, which gave them freedom to select members, choose patients, and adopt their own payment policies. In many parts of the country, health care services and providers were segregated by race. Since passage of civil rights laws in the 1960s, these practices are no longer legal.

379. Health care financing. It is primarily through health insurance that Americans pay for their health care. Employer-provided health plans cover some of the costs of health care; others rely on private health insurers or managed care organizations, such as health maintenance organizations. Those without insurance must rely on financial assistance to obtain health coverage, and may qualify for public assistance, such as supplementary security insurance.

380. Public assistance for health care includes Medicare (for the elderly) and Medicaid (for the non-elderly poor). Medicare provides health insurance coverage for persons aged 65 years and older, and individuals with disabilities. Medicare provides health care coverage for more than 38 million people at a cost of about $200 billion. Medicaid provides coverage for low-income persons. It is administered by the states with matching funds from the Federal Government. Medicaid covers 37 million people at a cost of about $164 billion. While Medicaid rules and policies are set and monitored by federal and state agencies, the administration of the programmes is run by insurance companies.

381. Although Medicare and Medicaid provide more than 70 million people with health coverage, a large number of Americans remain uninsured and unable to access quality health care. Most of the uninsured are minorities and women with children, resulting in unequal access

to health care. Almost 30 per cent of Hispanic children, and 18 per cent of Black children are estimated to be without health insurance. Moreover, immigrants, those who are unemployed, work part-time, or are retired often have inadequate insurance.

382. Eliminating disparities in health care access. The U.S. Government has long sought to address the need for equal access to quality health care. During the past 35 years in particular, federal civil rights laws and policies have addressed the need to ensure equal access to health care and non-discrimination in health care programmes for racial and ethnic minorities. Congress has created several federal statutes designed to achieve equal protection of the laws through an emphasis on equality of access to institutions, including the nation's health care system. These statutes have helped establish the framework for the Federal Government's efforts to eliminate discrimination in the health care delivery system.

383. Two statutes are particularly relevant to health care: (a) the Hill-Burton Act, formally Title VI and XVI of the Public Health Service Act of 1964, Public Law No. 79-725, 60 Stat. 1040 (1946), codified as amended at 42 U.S.C. sec. 291-291-0 (1994) and Pub. L. No. 93-641, 88 Stat. 2225 (1974); and (b) Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352, Title VI, 78 Stat. 252 (codified as amended at 42 U.S.C. sec. 2000d-2000d-7 (1994)).

384. When it was first enacted in 1946, the Hill-Burton Act was designed as a means for facilitating hospital construction, especially in rural communities. In 1964, however, Congress reformulated Hill-Burton as a key provision in the Public Health Service Act to include the modernization of existing hospital facilities. In 1974 the Act was amended yet again, this time requiring that hospitals receiving funds provide a specified amount of service to those unable to pay. Additionally, a facility receiving funds was to be made available to all members of the community in which it was located, regardless of race, colour, national origin or creed.

385. The Department of Health and Human Services (HHS) is the federal agency with primary responsibility for enforcing Title VI in the health care context, as well as other civil rights statutes and provisions addressing equal access to quality health care. HHS seeks to ensure compliance with the non-discrimination provisions of these laws by relying on implementing regulations, policy guidance, comprehensive full-scope compliance reviews, complaints investigations, mediation, settlement agreements, technical assistance, outreach and education programmes, as well as through enforcement actions.

386. The impact of Medicare and Medicaid, originally passed by Congress in 1965, has been enormous. In 1964, Whites were almost 50 per cent more likely than Blacks to see a physician. By 1994 this ratio had been reversed: Blacks were about 12 per cent more likely than Whites to have seen a doctor in the preceding two years. However, Blacks continue to be twice as likely to use hospital outpatient services, while Whites are substantially more likely to visit a private physician.

387. President Clinton has committed the nation to an ambitious goal of eliminating by 2010 disparities in health status experienced by racial and ethnic groups in the United States. President Clinton targeted six health priority areas: infant mortality, breast and cervical cancer

screening and management, cardiovascular disease, diabetes, child and adult immunization levels, and HIV/AIDS. As part of this effort, for example, the Center for Disease Control recently awarded $9.4 million to 32 community coalitions in 18 states to reduce the level of disparities in one or more of the priority areas.

388. Furthermore, in response to studies showing that language barriers in health care present serious problems for a large percentage of Americans with limited English proficiency (LEP), on 11 August 2000, President Clinton issued Executive Order 13166, "Improving access to services for persons with limited English proficiency". The President ordered that "each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavour, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programmes and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of Title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations." As described in the LEP Guidance, recipients "must take reasonable steps to ensure meaningful access to their programmes and activities by LEP persons".

389. Environmental justice. The United States recognizes that low-income and minority communities frequently bear a disproportionate share of adverse environmental burdens and is working to implement existing laws that better protect all communities. "Environmental justice" is the fair treatment and meaningful involvement of all people regardless or race, colour, national origin, culture or income with respect to the development, implementation, enforcement and compliance of environmental laws, regulations and policies. Fair treatment means that no group of people, including racial, ethnic, or socio-economic groups, should bear a disproportionate share of negative environmental consequences resulting from industrial, municipal and commercial operations or the execution of federal, state, local and tribal programmes and policies.

390. On 11 February 1994, President Clinton issued Executive Order 12898 to all departments and agencies of the Federal Government directing them to take action to address environmental justice with respect to minority populations and low-income populations. Agencies were directed, among other things, to address disproportionate human health or environmental effects of programmes on such populations, to collect additional data on these subjects, and to coordinate their efforts through a newly established inter-agency working group.

391. While most environmental laws do not expressly address potential impacts on low-income and minority communities, Executive Order 12898 directs the Environmental Protection Agency (EPA) "[t]o the greatest extent practicable and permitted by law ... [to] make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programmes, policies, and activities on minority populations and low-income populations." Detailed

information about the EPA's environmental justice programme, the environmental justice federal advisory committee, and related financial assistance programmes is available on the Internet at <http://es.epa.gov/oeca/main/ej/index.html>.

392. Recently, American Indian and Alaska Natives argued successfully to the EPA that Indian tribes had suffered environmental injustice because the Federal Government had not provided them equitable funding and other agency resources necessary to develop environmental programmes. Federally recognized Indian tribes generally have the authority to regulate activities on their reservations that affect their environment. Thus, such Indian tribes are in the process of developing comprehensive tribal environmental laws and regulations. However, unlike the states of the United States, Indian tribes had not, until recently, been provided the federal resources to assist them in the development of their environmental programmes. Today, the EPA has significantly increased its funding and technical assistance to Indian tribes. As a result many tribes are now developing and enacting their own tribal environmental codes and beginning to take charge of their own environments through the enforcement of these codes and through an improved partnership with EPA.

393. Many groups and advocates are concerned that existing civil rights legal remedies may provide insufficient protection from environmental hazards for minority groups. In R.I.S.E., Inc. v. Kay, 768 F. Supp. 1144 (E.D. Va. 1991), aff'd, 977 F.2d 573 (4th Cir. 1992), for example, a Fourteenth Amendment challenge to the siting of county-run regional landfills in predominantly Black neighbourhoods was rejected because the plaintiff had not provided sufficient evidence of intentional discrimination. The District Court stated that the Equal Protection Clause does not impose an affirmative duty to equalize the impact of official duties on different racial groups, but merely prohibits government officials from intentionally discriminating on the basis of race. Advocates have also asserted violations of Title VI of the Civil Rights Act of 1964 in environmental justice cases, but there have been no authoritative court decisions on this issue. In December 1997, the Third Circuit in Chester Residents Concerned for Quality Living v. Seif, 32 F.3d 925 (3d Cir. 1997), held that plaintiffs, Black residents of the predominantly Black city of Chester, Pennsylvania, had a private right of action under EPA's Title VI disparate impact regulations to bring a lawsuit challenging alleged discriminatory effects of the state's environmental permitting practices. The Supreme Court granted certiorari review, but then dismissed the case and vacated the opinion as moot when the permit at issue in the case was withdrawn in August 1998 (524 U.S. 974 (1998)).

394. Some have argued that the U.S. Navy's use of Vieques Island in Puerto Rico as a bombing range has had negative environmental consequences for Puerto Ricans living on or near the island. In 1999, the death of a civilian security guard (the first in over 60 years of the Navy's use of the range) sparked extensive protests against the U.S. Navy's use of the range.

395. Federal agencies have addressed environmental justice issues in several contexts. For example, the White House Council on Environmental Quality (CEQ) issued guidance to agencies on addressing environmental justice concerns under the National Environmental Policy Act, 42 U.S.C. 4321-4370d, which requires agencies to analyse the environmental and related socio-economic, cultural and other impacts of their decisions. The EPA has established a formal advisory council made up of representatives from community organizations, academia, NGOs, industry, and state and local governments to advise the agency of environmental justice policy

matters. Agencies have also conducted outreach to affected communities to hear about environmental justice concerns in a variety of contexts, ranging from siting of transportation projects to hazardous waste clean-up remedies to selecting supplemental environmental projects in environmental enforcement actions. Moreover, the Agency's Environmental Appeals Board and other administrative tribunals review agency decisions for compliance with Executive Order 12898, described above.

396. Education and training. Racial segregation in education has been illegal in the United States since the U.S. Supreme Court's landmark decision in Brown v. Board of Education, 349 U.S. 483 (1954). As a result of that decision, the Civil Rights Act of 1964, and Swann v. Board of Education, 402 U.S. 1 (1971), schools became increasingly integrated. Subsequently enacted statutes provide additional protections. Many enforcement actions have been brought by the Government. The Department of Justice has brought more than 200 cases involving more than 500 school districts that practised de jure discrimination. The U.S. Department of Education administers a number of significant laws and programmes many of which are replicated at the state and local level. In their totality, these measures create a legal and policy framework aimed at the elimination of race-based disparities in educational quality and opportunity. Today, the American public educational system is open and accessible to all, regardless of race, ethnicity, immigration status, or socio-economic status.

397. The Office for Civil Rights (OCR) within the U.S. Department of Education (Department) bears the primary federal responsibility for eliminating barriers to equal educational opportunity. This office enforces a number of laws prohibiting discrimination in programmes and activities receiving federal financial assistance.

398. OCR's statutory enforcement responsibility includes Title VI of the Civil Rights Act of 1964 (Title VI), and its implementing regulation at 34 C.F.R. Part 100 and 101, which prohibit race, colour, and national origin discrimination. This statutory and regulatory framework affects virtually the entire scope of education in the United States, as nearly all education institutions in the nation - from elementary through graduate or professional schools - receive federal financial assistance. OCR monitors the activities, practices and policies of:

- Nearly 15,000 public school districts;
- More than 3,600 colleges and universities;
- Approximately 5,000 proprietary organizations, such as training schools for truck drivers and cosmetologists; and
- Thousands of public libraries, museums and vocational rehabilitation agencies.

399. Currently, OCR is responsible for the civil rights provisions for the Magnet Schools Assistance Program (Title V, Part A of the Elementary and Secondary Education Act). OCR conducts a pre-grant review of magnet school applications to determine whether the school district has an eligible desegregation plan or voluntary plan to eliminate, prevent, or reduce minority group isolation. OCR provides civil rights technical assistance to these school districts.

400. During its early years, OCR focused on school districts and colleges that were operating openly segregated education systems. OCR's work has evolved from an initial focus on monitoring and enforcing desegregation plans to the more complex and subtle issues of ensuring students and student applicants equal access to programmes and services.

401. Twelve field offices throughout the country conduct OCR's enforcement work. The headquarters office issues policy in response to emerging issues or when there is new legislation, referenda, or court decisions. Policy guidance is shared broadly to help educators meet their civil rights obligations. OCR executes its civil rights compliance responsibilities through a number of activities, including complaint investigations, compliance reviews and technical assistance.

402. A large share of OCR's work is devoted to investigating civil rights complaints filed by students, parents and others. OCR has incorporated non-adversarial dispute resolution techniques into the case resolution process. For example, OCR can act as a neutral third party, mediating between the student or parent and the school or college to enable them to arrive at an agreement on how to resolve the issues in a complaint. Or, OCR can negotiate with the recipient, becoming a party to the resolution agreement resulting from investigating the allegations raised in the complaint. Often, OCR uses a combination of these techniques to achieve case resolution. In some instances, OCR reaches the determination that there is insufficient evidence to support a finding of a civil rights violation. It is only when all other methods fail that OCR moves to formal administrative or judicial enforcement.

403. In addition to responding to complaints, OCR initiates and conducts reviews to determine compliance with the nation's civil rights laws. School districts or local and state education agencies are targeted using information from contemporary sources. Education and civil rights groups, community organizations, parents and the media all contribute to the variety of information used in OCR's identification process. OCR also relies on statistical data from sources such as the Elementary and Secondary School Civil Rights Compliance Report, which it administers.

404. Eliminating discrimination includes the prevention of discrimination. OCR provides technical assistance to schools and colleges, as well as to community, student and parent groups. The aid that OCR gives to education institutions helps them comply with federal civil rights requirements, while the assistance given to students and others informs them of their rights under the law regarding equal access to educational opportunity.

405. One example of the timely assistance given by OCR to school districts and state education agencies is the work of OCR's San Francisco office. California's Proposition 227, which passed in June 1998, requires school districts to redesign their education programmes for the state's 1.4 million English language learners. Before the start of the new school year, districts had to develop new curricula, obtain new teaching material, revise student and teacher assignments, and educate teachers and parents about new state requirements. OCR assisted California districts by working with the state education agency to offer a series of workshops at school districts and county offices of education focusing on federal law in the context of the new state law.

406. In addition to the work of OCR and other federal agencies, the current Administration has instituted and expanded an array of programmes to widen college opportunities for students of modest means - a group disproportionately composed of racial and ethnic minorities.

407. Nonetheless, in the area of education, there continues to be a mixed record of recent gains and persistent inequalities. It is noteworthy, however, that inequalities have narrowed. Among the population 25 years and over in 1998, the proportion of Whites with a high school diploma (84 per cent) was higher than for Blacks (76 per cent) or for Hispanics (56 per cent), but not significantly different from the figure for Asians and Pacific Islanders (85 per cent). In 1980, there was a larger differential in the proportions who had completed high school for Whites (69 per cent) and Blacks (51 per cent) than in 1998.

408. In 1998, 25 per cent of the White population 25 years and over had completed college (Bachelor's degree or higher). The corresponding proportions were 15 per cent for Blacks, 42 per cent for Asian and Pacific Islanders, and 11 per cent for Hispanics.

409. On average, Hispanics are likely to have much lower levels of educational achievement than Whites or Blacks. For Hispanics generally, the figures for 1999 indicate that 61.6 per cent of the population 25 to 29 had completed at least high school. Those from Central and South America were more likely to have achieved that educational level (62.9 per cent) than Mexican Americans (46.2 per cent) or Puerto Ricans (59.8 per cent), with Cubans at about the same level (62.1 per cent).

410. According to the 1990 decennial census, the proportion of American Indians, Eskimos, and Aleuts 25 years and over who were high school graduates was 66 per cent. Corresponding figures from the 1990 census were 78 per cent for Whites, 63 per cent for Blacks, 78 per cent for Asians and Pacific Islanders, and 50 per cent for Hispanics.

411. For the proportions who had completed college, the 1990 census shows 9 per cent for American Indians, Eskimos, and Aleuts; 22 per cent for Whites; 11 per cent for Blacks; 37 per cent for Asians and Pacific Islanders; and 9 per cent for Hispanics.

412. Bilingual education. The current Title VII of the Elementary and Secondary Education Act responds to the needs of students for whom English is a second language. Section 7102 (a) (15) includes among the underlying congressional findings the following: "[T]he Federal Government, as exemplified by Title VI of the Civil Rights Act of 1964 and Section 204 (f) of the Equal Education Opportunities Act of 1974, has a special and continuing obligation to ensure that States and local school districts take appropriate action to provide equal educational opportunities to children and youth of limited English proficiency." Further, in Section 7102 (b), the Congress declares it to be the policy of the United States "to assist state and local educational agencies, institutions of higher education and community-based organizations to build their capacities to establish, implement and sustain programmes of instruction for children and youth of limited English proficiency". To implement this policy, Title VII provides for assistance for, among other things, bilingual education capacity and demonstration grants and research, evaluation, and dissemination.

413. In 1974, Congress established the Office of Bilingual Education and Minority Languages Affairs to help school districts through funding and providing technical assistance to meet their responsibility to provide equal education opportunity to limited-English proficient children. A subsequent Supreme Court ruling, Plyler v. Doe, established that states cannot deny an equal public education to undocumented immigrant children. Amendments to Title VII since its initial passage have expanded eligibility to students who are limited-English proficient; emphasized the transitional nature of native language instruction; reinforced professional development; supplied additional funds for immigrant education; and provided for research and evaluation at the state and local level.

414. Today, 2.8 million elementary and secondary students, speaking over 150 languages, are identified as limited-English proficient. Among the several components that make up the Clinton Administration's Hispanic Education Action Plan are bilingual, immigrant, and migrant education programmes targeting elementary and secondary students, as well as sustained mentoring and college assistance programmes. In addition, the Administration has proposed expansion of an adult education "English as a Second Language Civics" programme to assist immigrants in learning English, navigating public institutions, and being involved in their communities.

415. Cultural activities. Article V (e) (vi) requires States parties to recognize and guarantee the right to equal participation in cultural activities. In the U.S. system, these rights are protected primarily through limitations on the ability of the Government to interfere or restrict the expression of one's culture. The First Amendment to the U.S. Constitution guarantees an individual's freedom of speech and peaceable assembly, which includes the expression of one's cultural identity.

416. The United States has a rich and diverse cultural heritage. From its earliest days, the United States was a haven for immigrants fleeing persecution on the basis of religion, and it continues to be a destination for immigrants of many different races, ethnicities and nationalities. Largely because of this history, most Americans recognize and appreciate the value of cultural diversity, and both individuals and groups pursue their cultural identities in a wide variety of ways. This tradition is manifest in the thousands of ethnic heritage parades and events, ethnic and cultural clubs, educational programmes, and religious, theatrical, artistic, and musical events that celebrate cultural diversity nationwide.

417. One medium where ever more culture is created, ever more commerce is transacted, and ever more learning takes place is the Internet. Unfortunately, unequal access to technology and high-tech skills has resulted in a "digital divide" in the United States along the lines of income, educational level, race and geography. The current Administration is striving to make access to computers and the Internet as universal as the telephone is today - in school, libraries, communities and homes. Working in partnership with the private sector, the Administration seeks to: broaden access to technologies such as computers, the Internet, and high-speed networks, provide people the skilled teachers and the training they need to master the information economy, and promote on-line content and applications that will help empower all Americans to use new technologies to their fullest potential.

418. Access to public accommodations. Consistent with article 5 (f), U.S. law provides strong protections for the right of equal access to any place or service intended for use by the general public, including transport, hotels, restaurants, cafes, theatres and parks.

419. Title II of the Civil Rights Act of 1964 (42 U.S.C. sec. 2000a) prohibits discrimination because of race, colour, religion, and national origin in certain places of public accommodation, such as hotels, restaurants, and certain places of entertainment. In addition, most states have their own laws requiring equal access to public accommodations.

420. Over the last five years, the majority of public accommodation cases pursued by the Justice Department have involved bars or nightclubs that utilize a similar pattern to keep Black patrons from entering the establishment. Typically the club owner advises Black patrons that the club is private and the patron would have to apply for membership. White patrons, in contrast, are allowed entry without membership or are offered the opportunity to become members on the spot. Cases that raised this scenario include United States v. Patin, United States v. Broussard, United States v. Lagneaux, and United States v. Richard, all cases filed in Louisiana in 1995, 1996, 1997, and 1999 respectively; and United States v. C & A Enterprises, filed in West Virginia in 1996. These cases were resolved and the defendants enjoined from continuing their discriminatory practices.

421. Two Title II suits in recent years have more broadly alleged discrimination in nationwide chains. In 1999, the Department sued HBE Corporation, the owner of the Adams Mark Hotels. The lawsuit alleged that AMH placed non-White guests in less desirable rooms than White guests or segregated them to the least desirable areas of the hotel; charged non-White guests higher room rates than White guests; charged different prices for goods and services for non-Whites guests than White guests; applied stricter security, reservation, and identification requirements to non-White guests than White guests; and had policies to limit the number of non-White clientele in the hotel's restaurants, bars, lounges or clubs. A proposed settlement of the case is pending court approval. It will enjoin future discrimination at Adams Mark Hotels and provides for a compliance officer to monitor compliance with the settlement decree; investigate any complaints filed by hotel guests; review, approve, and monitor a training programme as well as oversee a testing programme; and establish a marketing plan to identify, target, and reach African American markets.

422. Several years earlier, a suit was filed against the Denny's restaurant chain. On 24 May 1994, settlement papers were filed in the United States' Title II action and two private lawsuits against Denny's, one of the largest food service companies in the country. The settlement, embodied in two consent decrees filed in U.S. District Courts in Los Angeles and Baltimore, resolved these suits that had claimed that Denny's failed to serve Blacks, required Blacks to pre-pay for their food, forced them to pay a cover charge, and neglected to serve them. Under the settlement, Denny's agreed to pay $45 million in damages and implement a nationwide programme to prevent future discrimination. The decrees required Denny's, inter alia, to: retain an independent Civil Rights Monitor with broad responsibilities to monitor and enforce compliance with the decrees; educate and train current and new employees in racial sensitivity and their obligations under the Public Accommodations Act; implement a testing programme to monitor the practices of its company and franchised-owned restaurants; and

feature Black and members of other racial minority groups as customers and employees in advertising to convey to the public that all potential customers, regardless of their race or colour, are welcomed at Denny's. The decrees are scheduled to expire in November 2000.

Article 6

423. Article 6 requires States parties to assure persons within their jurisdictions effective protection and remedies through tribunals and other institutions for acts of racial discrimination, including the right to seek "just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination".

424. As set forth throughout this report, U.S. law offers those affected by racial discrimination a number of different remedies, ranging from individual suits in the courts, to reliance on administrative procedures to criminal prosecution of offenders.

425. Private suits. The federal statutes derived from the Civil Rights Act of 1868, including most of the laws dealing with discrimination by governments and their officials, give the individual a "cause of action", i.e., a right to sue in federal court to correct the alleged discrimination. See, e.g., 42 U.S.C. sec. 1981-1985. These suits may seek injunctive relief, which requires the governmental unit or official to correct the conduct, and monetary relief, which requires the payment of damages. A government official who "knew or ought to have known" that the conduct was unconstitutional or in violation of federal law may also be subjected to punitive or exemplary damages. If the plaintiff "substantially prevails" in one of these suits, the plaintiff can also recover attorneys' fees. Private litigation under these provisions has played a substantial role in promoting and protecting racial equality. Non-governmental organizations that promote civil rights are frequently involved in assisting individual lawsuits. Further, the availability of recovery of attorneys' fees has encouraged lawyers and organizations to come to the assistance of such individuals and provides the financial wherewithal to pursue future cases.

426. Civil suits by the United States. In many circumstances, the Federal Government is authorized to initiate suits to enforce racial equality. See, e.g., the Voting Rights Act, the Fair Housing Act; Titles II, IV and VII of the Civil Rights Act; and the Equal Credit Opportunity Act. Involvement of the government agency in such litigation is important because these suits usually include allegations of discriminatory "patterns or practices" that require intensive investigation that would be difficult for a private party to pursue. The Department of Justice also administers the pre-clearance requirement of the Voting Rights Act, which requires review and approval of changes in state and local voting practices and procedures to assure that they do not have the purpose or effect of denying or abridging the right to vote of members of minority groups. It applies in states and other jurisdictions which historically have denied or abridged minority voting rights.

427. In addition, under the Fair Housing Act, the Secretary of Housing and Urban Development may initiate investigations and file complaints relating to cases of housing discrimination. The Secretary can also commence actions in administrative tribunals to enforce laws prohibiting housing discrimination.

428. Criminal prosecution. A number of federal statutes also provide for criminal penalties for intentional or wilful violations. In these cases, the U.S. Attorney for the district in question will initiate an investigation, either on the prosecutor's own initiative or on information provided by the Civil Rights Division or by the private complaining party.

429. Administrative remedies. An entire federal agency, the Equal Employment Opportunity Commission (EEOC), is devoted to the enforcement of anti-discrimination laws relating to employment. An individual may file a complaint with the Commission, which engages in initial investigation and attempts to provide a resolution of the matter through conciliation. In cases where conciliation fails and a determination is made to file a lawsuit to vindicate the public interest, it may assume direct responsibility for prosecuting the case. In other cases, it will issue a "right to sue" letter, permitting the individual to pursue the claim in private litigation.

430. By statute, the EEOC has five Commissioners and a General Counsel, each of whom is appointed by the President of the United States and confirmed by the Senate. With its headquarters in Washington, D.C., the EEOC operates approximately 50 field offices nationwide, including district, area and local offices. Each of these field offices has an enforcement staff responsible for accepting charges of discrimination from the public, investigating the charges, and attempting conciliation and mediation. Each district and most area offices also have a legal unit, responsible for providing legal advice to the enforcement staff and bringing lawsuits in federal court to enforce Title VII.

431. In addition to enforcement efforts through the administrative process and litigation, the EEOC enforces Title VII though various other means. For instance, the EEOC issues procedural regulations implementing Title VII, requires employers to post notices summarizing the requirements of Title VII, and requires large employers to file reports on the relationship of minority workers to the employer's total workforce in specified job categories.

432. The EEOC recently has been able to implement significant changes in the pursuit of ending race discrimination. The EEOC has increased its staff of investigators and attorneys and has modernized its technology. In addition, the EEOC has developed a comprehensive strategic enforcement model to reduce the backlog of charges, increase the number of charges resolved through mediation, develop closer ties with its stakeholders in local communities, and increase public awareness of discrimination. In the arena of federal employment, the EEOC has modified the regulation governing the administrative complaint process, 29 C.F.R. sect. 1614, to streamline the process by eliminating unnecessary layers of review and addressing perceptions of unfairness. The most significant change is the transfer of authority to issue a final decision on discrimination complaints from the agency charged with discrimination to the EEOC.

433. Since its creation in 1965, the EEOC (and state and local fair employment practice agencies, known as FEPAs) have received approximately 1.2 million charges of discrimination based on race and approximately 275,000 charges of discrimination based on national origin. In fiscal year 1999, the EEOC and the FEPAs received approximately 50,000 charges of discrimination based on race and approximately 13,000 charges of discrimination based on national origin. Since 1965, the EEOC and the FEPAs have recovered more than $2.2 billion in monetary damages through voluntary settlement or conciliation during the administrative process

on behalf of victims of discrimination. In 1999 alone, the EEOC recovered over $210 million in monetary damages in the administrative process. The EEOC also has initiated lawsuits based on many meritorious charges that were not resolved in the administrative process, recovering over $8.5 million in 1999. Over the past 10 years, the EEOC has filed 866 lawsuits alleging discrimination based on race and 242 lawsuits alleging discrimination based on national origin. In many cases, the EEOC secures other valuable relief in addition to monetary damages, such as reinstatement of wrongfully discharged employees, court-ordered training in the equal employment opportunity laws, the development of written equal employment opportunity policies, and court orders prohibiting specific discriminatory practices. Taken together, the monetary and non-monetary relief serve the dual purpose of compensating victims of discrimination and preventing similar forms of discrimination from recurring in the future.

434. Other federal agencies also play important roles in enforcing civil rights and equal protection.

435. At the Department of Labor's Office of Federal Contract Compliance Programs, individuals may file complaints if they believe they have been discriminated against by federal contractors or subcontractors, and the Office itself may conduct compliance investigations to determine whether contractors are complying with Executive Order 11246's non-discrimination and affirmative action obligations. Complaints may also be filed by organizations on behalf of the person or persons affected. Other departments administer laws requiring recipients of federal financial assistance to provide equal opportunity for participants of programmes that receive the federal financial assistance.

436. As discussed earlier, the Department of Education's Office of Civil Rights (OCR) bears primary responsibility for enforcing laws prohibiting discrimination in educational programmes and activities receiving federal financial assistance. But while a large share of OCR's work is enforcement, OCR also issues national policy statements that define to the nation-at-large the scope of legal requirements to eliminate racial barriers to equal educational opportunity. These policies address many key, sometimes controversial issues, including:

437. Educational opportunity for English language learners. OCR requires school districts to ensure equal educational opportunity to English language learners. Districts are required to take affirmative steps to provide equal educational opportunity where the inability to speak and understand the English language excludes national origin minority group children from effective participation in the district's educational programme. The Supreme Court in Lau v. Nichols, 414 U.S. 563 (1974) upheld OCR's policy that requires school districts to ensure that language barriers do not exclude English language learners from effective participation in their programmes.

438. Higher education desegregation. OCR's policy provides guidance to institutions of higher education pursuant to the Supreme Court's decision in Ayers v. Fordice, 111 F. 3d 1183 (4th Cir. 1997) cert. denied, 522 U.S. 1084 (1998), requiring the elimination of vestiges of desegregation in formerly de jure higher education systems.

439. Race-based financial assistance. OCR's policy guidance on race-based financial assistance sets forth five principles that satisfy the requirements of Title VI. These principles provide that:

1. A college may make awards of financial aid to disadvantaged students without regard to race or national origin even if that means that such awards go disproportionately to minority students.

2. A college may award financial aid on the basis of race or national origin if the aid is awarded under a federal statute that authorizes the use of race or national origin.

3. A college may award financial aid on the basis of race or national origin if the aid is necessary to overcome the effects of past discrimination. A finding of discrimination may be made by a court or administrative body, and may also be made by a State or local legislative body, as long as the legislature has a strong basis in evidence identifying discrimination within its jurisdiction for which that remedial action is necessary. In addition, a college may voluntarily take action to remedy its past discrimination where it has a strong basis in evidence for concluding the action is necessary to redress its past discrimination and its financial aid programme is narrowly tailored to that purpose.

4. A college may promote its First Amendment interest in diversity by weighing many factors - including race and national origin and its efforts to attract and retain a student population with different experiences, opinions, backgrounds, and cultures - provided that the use of race or national origin is consistent with the constitutional standards reflected in Title VI, i.e., that it is a narrowly tailored means of achieving the goal of a diverse student body.

5. Title VI does not prohibit an individual or an organization that is not a recipient of federal financial assistance from directly giving scholarships or other forms of financial aid to students based on their race or nation origin. Principles 3 and 4 apply to the use or race-targeted privately donated funds by a college and may justify awarding these funds on the basis of race or national origin if the college is remedying past discrimination or attempting to achieve a diverse student body.

440. Racial harassment. OCR's policy on racial harassment provides that a recipient of federal financial assistance violates Title VI if (a) an official representative of a recipient treats someone differently in a way that interferes with or limits the ability of the student to participate in or benefit from the recipients' programme; (b) the different treatment occurred in the course of the official or representative's assigned duties or responsibilities; and (c) the different treatment was based on race, colour, or national origin, and there was no legitimate non-discriminatory non-pretextual basis for the different treatment. An official representative will also be in violation of Title VI if his or her actions establish or contributes to a "racially hostile environment" (a) when the recipient had actual or constructive notice of a racially hostile environment; and (b) a racially hostile environment existed, and (c) the recipient failed to respond adequately to redress the racially hostile environment.

441. U.S. Commission on Civil Rights Oversight. In addition to institutions devoted to law enforcement, other bodies are involved in making policy recommendations to improve the protection of the rights of minorities. The Civil Rights Commission conducts studies and makes recommendations in this regard, and it receives communications from individuals and groups about alleged discrimination.

442. Further, through 51 State Advisory Committees, including the District of Columbia, the Civil Rights Commission receives information on civil rights issues in the states. Through the Commission's regional directors, the Committees hold regular meetings, cooperate on race-related projects, and submit findings to the Commission on civil rights issues that have regional importance. From time to time, the Commission may recommend specific projects to be undertaken.

443. Equal opportunity officers. Another approach to protecting individuals is the requirement that many larger employers designate an "equal opportunity officer" within their organization, whose responsibility is to receive and respond to complaints about employment discrimination within the firm. In effect, this requirement provides an internal advocate within the firm for protection of the rights secured by this Convention. The equal opportunity officers may make recommendations to prevent discriminatory practices, as well as to remedy instances that have occurred. They are not, strictly speaking, "enforcement" officers, but have had a significant impact on realization of the goals of non-discrimination.

Article 7

444. Article 7 requires States parties to adopt measures in the fields of teaching, education, culture and information to combat racial discrimination and to promote racial and ethnic tolerance and friendship among nations and groups, and to propagate the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

445. The President's Initiative on Race actively educated the American people about the role of race in our nation's history and its current impact on our society. From the Initiative on Race, several publications were produced and widely disseminated to community groups, educational institutions, public officials and individuals in order to provide a more accurate picture of the nature of racial issues.

446. "Changing America: Indicators of Social and Economic Well-Being by Race and Hispanic Origin" documents current differences in key indicators of well-being: education, labour markets, economic status, health, crime and criminal justice, and housing and neighbourhoods. The information in this publication provides a factual base on which to build dialogue about race.

447. "Pathways to One America in the 21st Century: Promising Practices for Racial Reconciliation" profiles community-based organizations focused on furthering racial reconciliation in a variety of fields. This publication is designed to be a reference tool to be used by Americans who wish to work in partnership with others working to overturn racial barriers and close opportunity gaps.

448. The "One America Dialogue Guide" is a step-by-step educational resource on ways to organize and conduct a cross-cultural dialogue in one's own community.

449. "One America in the 21st Century: Forging a New Future" is the final report to President Clinton by the Advisory Board to the President's Initiative on Race. This comprehensive document is an account of the Advisory Board's 15-month examination of race relations in the United States. By exploring the historical basis for existing perceptions and misperceptions of race in America, this report creates a social context for productive dialogue on how to build One America. The report also makes specific recommendations on how the government, the corporate community, non-governmental organizations and private citizens can take active steps to promote racial reconciliation.

450. All four publications are available in print and may be viewed and printed from the White House Web site <http://www.whitehouse.gov>.

451. The President's Initiative for One America continues to further the President's goals of educating the American public about race. In October 2000, the Initiative for One America and the Department of Education will organize the third annual Campus Week of Dialogue. This year's theme, "Many Paths, One Journey: Building One America", reflects the mission of educating students on diversity-related issues and providing all students the opportunity to succeed in a multi-racial society.

452. The United States also promotes the goals of article 7 globally through the U.S. Department of State, particularly the U.S. Information Service. Media like World Net and Voice of America are used to broadcast news and information programmes on rule of law, tolerance and other topics related to combating racism and to promote tolerance. These outlets give overseas audiences direct access to experts and policy makers in the United States concerned with issues related to race.

453. The United States also sends speakers to overseas missions to foster discussion on issues important to multi-cultural societies. Similarly, the State Department's Office of Public Diplomacy distributes publications to target organizations ranging from host country Governments to local media and civil society groups such as NGOs.

454. Moreover, the United States promotes the interests identified by article 7 through various professional and education exchange programmes. Through the Professionals in Residence programme, the Department of State sends specialists to non-academic institutions such as foreign media organizations and government ministries to promote the interests identified in

article 7. The United States is also active in CIVITAS, an international consortium for civic education which maintains a worldwide network devoted to promoting informed and responsible citizenship. In addition, the United States devotes substantial resources to the Fulbright Scholar Program, providing enhanced educational opportunities to U.S. and foreign scholars through grants and fellowships, and the International Visitors Program, which brings foreign judges, lawyers, NGO leaders and teachers to the United States for study tours and professional conferences.

455. In the fall of 1997, President Clinton identified the prevention and prosecution of hate crimes as a priority issue for the nation and announced the creation of a national initiative to examine the current state of race relations in America. In response, the Attorney-General established a Hate Crime Working Group consisting of staff from all Justice Department agencies. A major initiative of the Hate Crime Working Group is to expand and improve hate and bias crime data collection within the Department of Justice.

456. Through its Office of Victims of Crime (OVC), the Department of Justice has taken steps to adopt measures to combat discrimination and to promote understanding among racial and ethnic groups. This is evidenced through various measures and programmes that are OVC funded.

457. In early 1998, OVC coordinated with the Bureau of Justice Statistics to develop a survey instrument to identify the number of Victims of Crime Act funded victim assistance programmes that serve hate and bias crime victims. OVC conducted this informal survey in May 1999.

458. OVC provides funding to the National Victim Assistance Academy which conducts annual training sessions at five different locations throughout the United States. Each year, the Academy reaches over 250 participants comprised of state and federal personnel that work with crime victims. There is a formal curriculum which includes a chapter on hate and bias crime.

459. OVC, in conjunction with the Bureau of Justice Administration, and the International Association of Chiefs of Police, developed an 11-page brochure entitled Responding to Hate Crimes: A Police Officer's Guide to Investigation and Prevention. The brochure teaches law enforcement officers how to identify and respond to hate crimes. This grant project printed 450,000 copies of the brochure which are anticipated for distribution to law enforcement agencies nationwide.

460. OVC plays a major role in the Justice Department Hate Crime Working Group's Hate Crime Training for Law Enforcement. OVC assisted in development of four training manuals and a student workbook. OVC assisted in the development and delivery of special training for local trainers and to all of the states, who in turn, are now reaching out to the local law enforcement agencies to provide training on responding to hate crime. Hundreds of local police departments have received this training in the last year.

461. As opportunities present themselves OVC provides training on hate crime, hate crime victims' needs, cultural awareness, and, effective responses to hate crime. This training has been provided at several national, and local conferences and symposia reaching thousands of victim service providers.

462. OVC also provides grant funding to such non-profit organizations as the National Multi-Cultural Institute which conducts training on cultural sensitivity in dealing with crime victims. Approximately 150 people have been trained this year. Additional training sessions are planned.

463. The Department of Interior operates several programmes that promote education and awareness of diverse students to the fields of science and natural resources. For instance, at Chamizal National Memorial, Texas, the National Park Service sponsors special programmes and activities to broaden understanding and to encourage perpetuation of cultural heritages in the performing and graphic arts.

464. The Department of Interior has also begun the Underground Railroad Program nationwide. This relatively new programme is in the process of identifying hundreds of key people and places in the U.S., Canada, and Mexico associated with the network of individuals who guaranteed the safety of escaped slaves during the nineteenth century abolitionist movement. Each person and site selected as part of this programme will be interpreted in terms of the acts of bravery and suffering in the quest for freedom for all.

D. Conclusion

465. Over the years, the United States has worked hard to overcome a legacy of racism and racial discrimination, and it has done so with substantial successes. Nevertheless, significant obstacles remain. But, as a vibrant, multi-cultural democracy, the United States - at all levels of government and civil society - continually re-examines and re-evaluates its successes and failures, having the elimination of racism and racial discrimination as its ultimate goal. The United States looks forward to discussing its experiences and this report with the Committee.

Annex I

RESERVATIONS, UNDERSTANDINGS, DECLARATIONS

WILLIAM J. CLINTON
President of the United States of America

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

CONSIDERING THAT:

The International Convention on the Elimination of All Forms of Racial Discrimination, was adopted by the United Nations General Assembly on 21 December 1965, and signed on behalf of the United States of America on 28 September 1966; and

The Senate of the United States of America by its resolution of 24 June 1994, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Convention, provided that:

"I. The Senate's advice and consent is subject to the following reservations:

(1) That the Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under Articles 4 and 7, to restrict those rights through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States."

Notes

[1] For ease of reference this report will use the terms for racial and ethnic categories used by the U.S. Census Bureau.

[2] The classification of the population by race and ethnicity is based on a statistical standard issued by the U.S. Office of Management and Budget (OMB) in 1977. OMB issued a revised standard in 1997. Under the revised standard, individuals may report more than one race; the Asian and Pacific Islander category is divided into two categories; and there are changes in terminology. The five racial categories are: White, Black or African American, American Indian and Alaska Native, Asian, and Native Hawaiian and Other Pacific Islander. The two ethnic categories are Hispanic or Latino and Not Hispanic or Latino. Data on the population by race and ethnicity from the 2000 census will reflect the 1997 standard and will become available in 2001.

[3] Since the population of Hispanic origin may be of any race, the four minority groups are not mutually exclusive. In 1999, 2.8 million individuals were classified in two minority groups, including 1.8 million Black and Hispanic; 0.4 million American Indian, Eskimo, and Aleut, and Hispanic; and 0.6 million Asian and Pacific Islander and Hispanic.

[4] Because the United States uses an acknowledgement process through which Native American tribes are given federal recognition (making them eligible to receive services and benefits provided to Native Americans), this figure may not reflect the number of people of Native American ancestry who do not belong to a federally recognized tribe.

[5] Both the NAEP and the 2000 Condition of Education reports are available on the Department of Education Web site, <http://www.ed.gov.>.

[6] Poverty data for children for 1989, which are from the 1990 census, exclude the small number of children in households who are not related to the householder.